EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

(3)

87-1162

Supreme Court, U.S.
FILED
JAN 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

RECORD ON APPEAL

VOLUME III OF THREE VOLUMES: PAPERS ON APPEAL TO N.Y.S.CT.AP.; U.S.S.CT. (pp. 658-901)

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420 Lexington Avenue
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(212) 972-5560

KINGS COUNTY CLERK'S INDEX NO. 20522/85

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NOTE: There are nine defendants with four legal representations. All defendants made motions to dismiss the complaint which were heard at three, separate hearings: November 13, 1985 (City Defendants and Insurance Department Defendant); December 16, 1985 (Defendant Rosenberg); and December 20, 1985 (City University Defendants and Defendant Union). Thus, there are three Notices of Appeal. The Appellate Division, Second Department, granted plaintiff's request to consolidate the three appeals into one for the appellate proceedings.

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ALL PARTIES AND THEIR
ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.

N.Y.S. Ct. of Ap., Mo. No. 1166SSD74
N.Y.S.S.Ct. App. Div. 2d, Nos. 3774E-3776E
N.Y.S.S.Ct. Kings Co., Index No. 20522/85

Plaintiff-Appellant, ALICE CLISSURAS, pro se

P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

City Defendants-Appellees, CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK

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Attorney for City Defendants-Appellees
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Union Defendant-Appellee, PROFESSIONAL STAFF CONGRESS/CUNY

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PLAINTIFF'S JURISDICTIONAL STATEMENT TO COURT OF APPEALS (PP. 658-679)

COURT OF APPEALS OF THE STATE OF NEW YORK

- -x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK,
TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK,
TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK,
BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK,
CITY UNIVERSITY OF NEW YORK,
NEW YORK CITY TECHNICAL COLLEGE,
PROFESSIONAL STAFF CONGRESS/CUNY,
DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and
LEWIS ROSENBERG,

Defendants-Respondents.

- -x

APPELLANT'S JURISDICTIONAL STATEMENT

This appeal is taken from the Supreme Court of the State of New York, Appellate Division, Second Department.

The Notice of Appeal is dated July 14, 1987, and it was served and filed on July 14, 1987.

An unsigned Appellate Division Decision and Order (one paper) was mailed to plaintiff-appellant, postmarked June 23, 1987, by the Law Department of the City of New York, representing the City Respondents; said Decision and Order was entered June 22, 1987.

There are four legal representations for the nine defendants-respondents, as follows:

PETER L. ZIMROTH, ESQ.
Corporation Counsel of the City of New York
Francis F. Caputo and Michael S. Adler, of Counsel
Attorneys for Defendants-Respondents City of New York,
Teachers' Retirement Board of the City of New York, and
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ROBERT ABRAMS, ESQ.
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Ann Teresa McIntyre, of Counsel
Attorneys for Defendant-Respondent Lewis Rosenberg
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(212) 972-5560

The following papers are attached at the end hereof:

The Notice of Appeal

The Decision and Order of the Appellate Division, Second Department

There was no opinion or memorandum of the Appellate Division

Special Term Judgment of the Supreme Court of the State of New York, County of Kings (Shaw, Jr.), entered in the office of the Clerk of the County of Kings, on the 19th day of December, 1985, dismissing the complaint as against the City Defendants and the Defendant Department of Insurance

Special Term Memorandum of the Supreme Court, Kings County (Bernstein), entered in the office of the Clerk of Kings County, on the 2d day of January, 1986, dismissing the complaint as against Defendant Lewis Rosenberg

Special Term Order of the Supreme Court, Kings County (Hurowitz), entered in the office of the Clerk of Kings County, on the 19th day of February, 1986, dismissing the complaint as against the City University Defendants and the Defendant Professional Staff Congress/CUNY

Special Term Memorandum of the Supreme Court, Kings County (Shaw, Jr.), informal finding and conclusion, dated November 19, 1985

Plaintiff brought this action against the nine defendants, as follows:

Employment Discrimination: Plaintiff was discriminated against on the basis of sex and religion. She was deprived of her employment moneys and the laws were not applied to her equally as Constitutionally required. New York State Constitution, Article I, Section 2; Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 768 (1983); CPLR §214(2); §218(a);

Constitutional due process rights have been withheld throughout; i.e., no hearing of this cause of action has been held to date.

Fraud: The employment discrimination was effected by fraudulent misrepresentations of fact and concealment of the facts. CPLR §213(8)

The issues of fraud, concealment, and misrepresentation were dismissed without a trial.

Conspiracy: All of the defendants concealed the causes of action herein. Connor v. Bryce, 170 N.Y.S. 94, 95-96 (1918).

Breach of Contractual and Fiduciary Duties: Membership in a public retirement system in the State results in a contractual relationship, which was breached herein. In addition, no accounting has been made to date of plaintiff's moneys. New York State Constitution, Article V, Section 7; CPLR §213.

Deprivation of Constitutional Rights to trial by jury and to counsel.

The many issues of fact in this action were dismissed without trial (and also without hearing).

Gross Negligence: The many errors made by fiduciary defendants were not corrected.

Abuse of Plaintiff's Person, Rights, and Property

All of the above issues were raised in the Second Department and Kings County. The above causes of action were dismissed by Kings County on the ground of all the causes being barred by a 4-month statute of limitations. The Second Department affirmed the dismissal on said ground.

Not one of the above causes is barred by a 4-month limitation.

The Courts and the Defendants have not responded to the causes of action.

Plaintiff has documented all of the causes of action; the defendants have not offered any documentation or substantiation of their arguments.

The plaintiff is pro se due to the refusal of over 30 attorneys to represent her. The Courts and the Defendants appear to use tactics to take advantage of Plaintiff's limited legal background.

The Plaintiff will, in addition to the above, raise all other relevant issues.

Dated: July 15, 1987.

Plaintiff hereby attests that on July 15, 1987, she served each opposing counsel, by mail, with a copy of this paper with the attachments.

/s/

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

NOTICE OF APPEAL TO COURT OF APPEALS (PP. 662-665)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

NOTICE OF APPEAL

Index No. 20522/85

S I R S:

PLEASE TAKE NOTICE, that the above-named plaintiff, relying upon the provisions of the Constitution of the United States and the Constitution of the State of New York, which involve discrimination, civil rights, due process, equal protection of the laws, right to trial, and right to counsel, hereby appeals as of right to the Court of Appeals from the Decision and Order (one paper) of the Appellate Division of the Supreme Court, Second Judicial Department, entered in the office of the Clerk of said Appellate Division, on the 22d day of June, 1987, which unanimously affirmed the three Orders of the Special Term

of the Supreme Court of the State of New York, County of Kings, entered in the office of the Clerk of the County of Kings, on the 19th day of December, 1985 (Shaw, Jr.), as against the City Defendants and the Defendant Department of Insurance; on the 2d day of January, 1986 (Bernstein), as against Defendant Lewis Rosenberg; and on the 19th day of February, 1986 (Hurowitz), as against the City University Defendants and the Defendant Professional Staff Congress/CUNY; which three Orders dismissed the complaint as against all of the defendants herein on the ground that plaintiff's claims of employment discrimination, fraud, concealment of causes of action, conspiracy, deprivation of Constitutional rights, and breach of contractual and fiduciar duties, were barred by a four-month statute of limitations, and the said plaintiff appeals from each and every part of said order of the Appellate Division, and from the whole thereof.

Dated: July 14, 1987.

Yours, etc.,

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

TO:

The Clerk of the County of Kings

Attorneys for the Defendants-Respondents
(Names, addresses, and telephone numbers appear on the next page.)

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Corporation Counsel of the City of New York
Francis F. Caputo and Michael S. Adler, of Counsel
Attorneys for Defendants-Respondents City of New York,
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Anne Ehrenkranz, of Counsel
Attorneys for Defendants-Respondents Board of Higher
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New York, New York City Technical College, Department
of Insurance of the State of New York
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Ann Teresa McIntyre, of Counsel
Attorneys for Defendant-Respondent Lewis Rosenberg
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Index No. 20522/85 Year 19

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF KINGS

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, et al.,

Defendants-Respondents.

NOTICE OF APPEAL

ALICE CLISSURAS
Plaintiff-Appellant, pro se

Office and Post Office Address, Telephone

P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

To

Clerk of the Court
Attorney(s) for Defendants-Respondents

FILED
1987 JUL 14 PM 2:46
KINGS COUNTY CLERK

The NYC Law Department File Number for this matter is _____

It is assigned to _____ 566-

REC. ON AP.. P. 666

Your reference to the above File Number on all documents and correspondence would be appreciated.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

DECISION 6/22/87. APP. DIV. (PP. 666-669)

____ AD2d ____ Argued March 9, 1987

LAWRENCE J. BRACKEN, J.P.
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
ARTHUR D. SPATT, JJ.

3774E
3775E
3776E

Alice Clissuras, appellant,
v City of New York, et al.,
respondents.

DECISION & ORDER

Alice Clissuras, Brooklyn, N.Y., appellant pro se.

Peter L. Zimroth, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Michael S. Adler of counsel), for respondents City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York.

Robert Abrams, Attorney-General, New York, N.Y. (Anne Ehrenkranz of counsel), for respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College and Department of Insurance of the State of New York.

D. Nicholas Russo, New York, N.Y., for respondent Professional Staff Congress/CUNY.

Bergadano, Zichello & Babchick, New York, N.Y. (Ann Teresa McIntyre of counsel), for respondent Lewis Rosenberg.

[illegible] (1) an order of the same court (Silverman, J.) dated December 24, 1985, which, upon his motion, dismissed the complaint insofar as it is asserted against the defendant Leola Rosenberg, and (3) an order of the same court (Silverman, J.) dated February 14, 1986, which, upon their motion, dismissed the complaint insofar as it is asserted against the defendants Board of Higher Education of the City of New York, City University of New York, New York City Technical College, and Professional Staff Congress/CUNY.

ORDERED that the order and judgment and the orders are affirmed, without costs or disbursements.

The plaintiff's claims against the public agency defendants, while not brought in the form of a proceeding pursuant to CPLR article 78, are governed by the four-month Statute of Limitations in CPLR 217 (see, Press v Monroe County, 50 NY2d 695; Solnick v Whalen, 49 NY2d 224). Although the plaintiff has characterized her causes of action as involving fraud, conspiracy, breach of contract, breach of fiduciary duty and negligence, the crux of her complaint is that she believes the defendants have improperly calculated her pension benefits. The plaintiff retired in 1982 and the determination as to the amount of her pension was approved by the defendant Teachers' Retirement Board of the City of New York on January 20, 1983. This action, commenced more than two years later, is thus time barred as to the public agency defendants.

The claims against the defendant union, the Professional Staff Congress/CUNY, were also properly dismissed. The plaintiff's various allegations of wrongdoing by the union are [illegible] a claim for breach of the duty of fair representation. The evidence in the record shows that the union's staff met with the plaintiff in attempt to resolve issues concerning her pension benefits and at one point arranged for representation by an outside attorney before concluding that her claims were without merit. While the plaintiff disagrees with the union's assessment as to the validity of her pension claims, she has not shown that the union's conduct was arbitrary, discriminatory or in bad faith (see, Barr v Civil Service Bar Assn. v City of New York, [illegible] Samuels v Real Estate Corp., 62 NY2d [illegible]).

We agree with the determination that the plaintiff's complaint fails to state a cause of action against the defendant Rosenberg, an attorney to whom the plaintiff was referred by the union in February 1981 for assistance in bringing a lawsuit against the defendant Teachers' Retirement Board of the City of New York. The plaintiff failed to allege facts sufficient to show that Rosenberg did not exercise "that degree of skill commonly exercised by an ordinary member of the legal community, resulting in damages to the client" (Bayeta v Reilly, 111 AD2d 491). Rosenberg withdrew as the plaintiff's attorney after arranging for her consultation with an actuary regarding her claim and after advising her of the four-month Statute of Limitations. Any damages caused by the plaintiff's failure to timely bring this action were not attributable to his conduct.

Finally, we have reviewed the remaining contentions of the plaintiff and find them to be without merit.

BRACKEN, J.P., LAWRENCE, KUNZEMAN and SPATT, JJ., concur.

ENTER:

MARTIN H. SCHWARTZ
Clerk

County Clerk's Index No 19

PLEASE TAKE NOTICE, that an order, of which the within is a copy, was duly entered in the office of the Clerk of the Appellate Division of the Supreme Court in and for the Second Judicial Department on the 22 day of June, 987.

Yours, etc.,

Peter L. Zimroth
Corporation Counsel,
Attorney for Municipal Respondents
100 Church Street,
New York, N. Y. 10007
Telephone: 566-4331

To: Alice Clissuras
Appellant Pro Se

New York Supreme Court

APPELLATE DIVISION, SECOND DEPARTMENT

Alice Clissuras,

Plaintiff-Appellant,

-against-

City of New York et al.,

Defendants-Respondents.

Appellate Division Order and Notice of Entry

Peter L. Zimroth
Corporation Counsel,
Attorney for Municipal Respondents
100 Church Street,
New York, N. Y. 10007

Due and timely service of a copy of the within Order and Notice of Entry is hereby admitted.

New York, ..., 19

.....
Attorney for

To

....., Esq.,
Attorney for

REC. ON AP., P. 669

JUDGMENT 12/18/85 (SHAW, J.S.C.) PP. 670-672

At a Special Term, Part 1 of the Supreme Court of the State of New York, County of Kings at the Courthouse, Civic Center, Brooklyn, New York on the 18 day of December, 1985.

P R E S E N T:

HON. JAMES H. SHAW, JR.

JUSTICE.

----------x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants.

----------x

PROPOSED JUDGMENT

Index No. 20522/85

Plaintiff herein having commenced this action for $500,000 in compensatory damages and $2,000,000 in punitive damages and for a judgment directing defendants to undertake an accounting of plaintiff's pension moneys; and

Defendants City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York

(City defendants) having moved pursuant to CPLR § 3211(a)(5) to dismiss the complaint because the action is barred by the statute of limitations; and

Defendant Department of Insurance of the State of New York (Insurance Department) having moved pursuant to CPLR §§ 3211(a)(2), 3211(a)(5), and 3211(a)(7) to dismiss the complaint because the Court lacks subject matter jurisdiction of plaintiff's claim for damages, the action is barred by the statute of limitations, and the complaint fails to state a cause of action; and

The aforementioned motions to dismiss having been heard by the Honorable James H. Shaw, Jr., at a Special Term, Part I of this Court, held at the Courthouse located at the Civic Center, Brooklyn, New York on November 13, 1985; and

The Court having considered the said motions and written memoranda and oral argument in support thereof, as well as plaintiff's written and oral responses thereto;

NOW, upon reading and filing the Notice of Motion to Dismiss of the City defendants, undated and the supporting affidavit of Suzanne Lank, dated October 30, 1985 and all exhibits annexed thereto, the Notice of Motion to Dismiss of the Insurance Department, undated and the supporting affidavit of Sue Barnett Bohringer, sworn to October 15, 1985 and all exhibits annexed thereto, plaintiff's affidavit in opposition to the City defendants' motion to dismiss, and all exhibits annexed thereto, plaintiff's affidavit in opposition to the Insurance Department's motion to dismiss, dated November 6, 1985 and affidavit in opposition of Alice Closson dated November 7, 1985 and all exhibits annexed thereto, and the affirmation of Suzanne Lank, both dated November 12, 1985 in reply to plaintiff's affidavit responding to the City defendants' motion to dismiss; and plaintiff having appeared pro se; City defendants having appeared by FREDERICK A. O. SCHWARZ, JR.,

Corporation Counsel of the City of New York, by Suzanne Lank; and the Insurance Department having appeared by Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer; and upon the written memorandum decision of this Court dated November 19, 1985;

NOW, upon the motion of FREDERICK A. O. SCHWARZ, JR., Corporation Counsel of the City of New York, by Suzanne Lank, Assistant Corporation Counsel, attorney for City defendants, it is

ADJUDGED that plaintiff's causes of action against both the City defendants and the Insurance Department are barred by the four-month statute of limitations; and the complaint is dismissed as to the City defendants and the Insurance Department, and the action is severed accordingly

ENTER:

Dated:

James H. Shaw Jr.
J.S.C.

Dorothy A. Dunn
Clerk

FILED
FEE

DECISION 1/2/86 (BERNSTEIN, J.S.C.) PP. 673-675

FORM 81 288

MEMORANDUM

SUPREME COURT : Kings COUNTY

Alice Clissuras,

Plaintiff,

vs.

City of New York, et al.,

Defendants.

By Bernstein, A.D. J.

Dated December 24, 1985

SPECIAL TERM PART I

Index No. 20522/ 85

The plaintiff brings this action against all of the defendants alleging conspiracy to defraud her from the true amount of pension that she has earned. She claims that the co-conspirator defendants have concealed from her the true amount of her pension, the rights to which she is entitled and the fact that certain increments to which she is due were not included in her pension. The defendant Rosenberg moves to dismiss the complaint on the grounds that it fails to set forth a cause of action. The defendant Rosenberg is an attorney who was retained by the defendant on or about February 6, 1983 by the Professional Staff Congress/CUNY, the union representing the plaintiff. Thereafter, on or about February 15, 1983 the defendant Rosenberg and the plaintiff met in

his office. Thereafter, on or about April 5, 1983 the defendant Rosenberg wrote to the plaintiff withdrawing as her attorney. In the brief submitted by the plaintiff she details the claim against the defendant Rosenberg as follow:

> "Defendant Rosenberg met with plaintiff once on February 15, 1983. She detailed the problems as she knew them at that time and she supported this with the documentation which she had at that time. Defendant Rosenberg did not discuss pleaintiff's (sic) with her; he did not discuss plaintiff's rights or choices; he did not give her any direction. At the end of the meeting, he told her to get an actuary."

It is obvious from the very detailed motion papers submitted by the plaintiff that all of her claims occurred prior to the meeting with the defendant Rosenberg and that she has suffered no damages by virtue of any malpractice or negligence on the part of the defendant Rosenberg.

She alleges in her conclusion that the causes of action against Rosenberg are"concealment of the causes of action, conspiracy, and breach of contract and fiduciary duty, all of which occurred upon contract with defendant Rosenberg and after such contract and are continuing to date."

Obviously, the plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages.

The motion is granted.

ENTER

J. S. C.

ORDER 1/14/86 (HUROWITZ, J.S.C.). PP. 676-677

At a Special Term, Part I, of the Supreme Court of the State of New York, County of Kings, at the Courthouse, Civic Center, Brooklyn, New York, on the 14 day of January, 1986

PRESENT:

HON. BARRY F. HUROWITZ,

JUSTICE.

----------X

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/ CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK and LEWIS ROSENBERG,

Defendants.

----------X

ORDER

Index No. 20522/85

UPON the notice of motion and the affidavit of Sue Barnett Bohringer, dated November 26, 1985, together with the exhibits attached thereto, in support of the motion of defendants Board of Higher Education of the City of New York, City University of New York and New York City Technical College (the "City University defendants") to dismiss the complaint,

the affidavit of plaintiff, dated December 16th, 1985, together with the exhibits attached thereto, in opposition to the motio of the City University defendants, the notice of motion and the affirmation of D. Nicholas Russo, dated December 6, 1985, together with the exhibits attached thereto, the affidavit of Beryl Weinberg, dated December 9, 1985, in support of the motion of defendant Professional Staff Congress/CUNY to dismis the complaint or, in the alternative, for summary judgment, the affidavit of plaintiff dated December 20th, 1985 in opposition t the motion of Professional Staff Congress/CUNY, the reply affirmation of D. Nicholas Russo, dated December 19, 1985, together with the exhibits attached thereto, in further suppor of the motion of Professional Staff Congress/CUNY, and oral argument having been heard on December 20, 1985, it is

ORDERED that the motion to dismiss of the City of University defendants is granted and the action is severed accordingly, and it is further

BP
JSC

ORDERED that the motion to dismiss of defendant Professional Staff Congress/CUNY is granted and the action is severed accordingly

ENTER

J.S.C.

MEMORANDUM DECISION 11/19/85 (SHAW, J.S.C.)

MEMORANDUM

UPREME COURT COUNTY

ALICE CLISURRASM

Plaintiff,

vs.

CITY OF NEW YORK, et al.,

Defendants,

By James H. Shaw, Jr. J. S. C.

Dated November 19, 1985

Index No. 20522/85

The motions by the City of New York and the Department of Insurance of the State of New York are decided simultaneously.

Plaintiff's law suits were commenced some three years subsquent to her retirement and are subject to a four month Statute of Limitations. Both causes of action are time barred.

Plaintiff's complaint against each defendant is dismissed.

Settle Judgment

James H. Shaw Jr.

J.S.C.

NOTE OF ISSUE (PP. 679-681)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- -x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, :

Defendants-Respondents.

- -x

NOTE OF ISSUE

Kings County Clerk's Index No. 20522/85

1. The term designated for the argument of the cause is November, 1986.

2. This is an appeal from three orders of the Supreme Court of the State of New York, County of Kings, dismissing the complaint, dated December 18, 1985, December 24, 1985, and February 14, 1986, as against all of the above-named defendants. The three orders have been consolidated for purposes of the appeal.

3. This is an action for employment discrimination sustained by plaintiff. Plaintiff's pension was substantially reduced by reason of defendants' fraud, conspiratorial acts,

violations of plaintiff's civil and due process rights, violations of New York State Pension Laws, concealment of causes of action, gross negligence, and breach of fiduciary and contractual obligations.

4. The action was commenced on August 28, 1985. This is an appeal from: an order of Hon. James H. Shaw, Jr., J.S.C.; an order of Hon. A. D. Bernstein, J.S.C.; and an order of Hon. Barry Hurowitz, J.S.C.

5. The date of filing the Record on Appeal is September 8, 1986.

6. The names, addresses, and telephone numbers of the attorneys of record and of any additional counsel for the respective parties are:

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FORM C CIVIL APPEAL (PP. 682-684)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

FORM C
CIVIL APPEAL PRE-ARGUMENT STATEMENT

APPEAL FROM:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 20522/85

Motions to Dismiss Complaint as against the City Defendants and the Department of Insurance of the State of New York; heard November 13, 1985, before the Honorable James H. Shaw, Jr.; Order Dismissing Complaint filed March 10, 1986; Notice of Appeal filed December 9, 1985;

Motion to Dismiss Complaint as against Lewis Rosenberg; heard December 16, 1985, before the Honorable A. D. Bernstein; Memorandum Decision dismissing the complaint filed January 2, 1986; Notice of Appeal filed January 8, 1986;

Motions to Dismiss Complaint as against the City University Defendants and the Professional Staff Congress/CUNY; heard December 20, 1985, before the Honorable Barry Hurowitz; Order Dismissing Complaint filed February 19, 1986; Notice of Appeal filed January 8, 1986.

NAMES OF COUNSEL:

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For Respondents:

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Corporation Counsel of the City of New York
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Suzanne Lank, Asst. Corp. Counsel
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ROBERT ABRAMS, ESQ.
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Attorney for Board of Higher Education of the City of New York, City University of New York, New York City Technical College ("City University Defendants") and Department of Insurance of the State of New York
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BERGADANO, ZICHELLO & BABCHIK, ESQS.
Attorneys for Defendant Lewis Rosenberg
Ann McIntyre, Counsel
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212-972-5560

METHOD OF DISPOSITION IN TRIAL COURT:

Appeal from three Orders dismissing the Complaint as against all defendants.

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW:

Plaintiff brought this action against 9 defendants. One attorney represents the three City Defendants; a second attorney represents the three City University Defendants and the New York State Department of Insurance; a third attorney represents the Union; and a fourth attorney represents the Union Attorney. The causes of action include employment discrimination based on sex and religion, conspiracy as to civil rights violations, deprivation of due process rights, fraud, gross negligence, breach of contract and breach of fiduciary duty. Five motions to dismiss the complaint were made, which motions were heard at three Special Terms. The complaint was dismissed as against all defendants.

ISSUES PROPOSED TO BE RAISED ON APPEAL:

At the first two hearings, no minutes were taken. I, appellant pro se, hereby certify that I have obtained the transcript of the last of the three hearings, for which transcript I have paid its cost.

Plaintiff intends to raise all issues on appeal, as follows: All of plaintiff's causes of action and documentation which substantiates the allegations and/or averments; arguments as to the timeliness of all causes of action; errors in the papers and arguments of defendants; errors in procedures as to attorneys for defendants and Court below; and all other relevant issues.

/s/
ALICE CLISSURAS
Appellant pro se

Dated: August 4, 1986

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- -x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- : FORM D
TRANSCRIPT INFORMATIO

CITY OF NEW YORK, et al., : CIVIL APPEAL

Defendants-Respondents. :

- -x

DISPOSITION OF COPIES: (1) to Clerk of this Court
(2) and (3) to court reporter
(4) to counsel for respondent
(5) retained by counsel for appellant.

APPEAL FROM: SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 20522/85

Judge: Hon. Barry Hurowitz, J.S.C.

Court Reporter: Mary Ellen Raftery, CSR

Appellant: Alice Clissuras, pro se

I, appellant pro se, hereby certify that I have paid the cost of the transcript to the Court Reporter and I hereby certify that I have mailed a copy of the transcript to each of the four attorneys for defendants-respondents.

DATED: August 4, 1986

/s/
ALICE CLISSURAS, Appellant pro

COURT REPORTER ACKNOWLEDGMENT

Return one copy to Clerk of the Appellate Division.

Date of Transcript: _____

Number of Pages: _____

DATED: _____

_____
Signature of Court Reporter

NOTE: THE TRANSCRIPT REFERRED TO ABOVE APPEARS IN THIS RECORD, IN VOL. I, PP. 32-66.

REC. ON AP., P. 686

PLAINTIFF-APPELLANT'S BRIEF
(PP. 686-740)

To be argued by
ALICE CLISSURAS
60 Minutes Requested

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S BRIEF

ALICE CLISSURAS
Plaintiff-Appellant, pro se
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(718) 875-6171

KINGS COUNTY CLERK'S INDEX NO. 20522/85

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PARTIES AND ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.) S.Ct., Kings Co. Index No. 20522/85

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT :
BOARD OF THE CITY OF NEW YORK, TEACHERS'
RETIREMENT SYSTEM OF THE CITY OF NEW YORK, :
BOARD OF HIGHER EDUCATION OF THE CITY OF
NEW YORK, CITY UNIVERSITY OF NEW YORK, :
NEW YORK CITY TECHNICAL COLLEGE,
PROFESSIONAL STAFF CONGRESS/CUNY, :
DEPARTMENT OF INSURANCE OF THE STATE OF
NEW YORK, and LEWIS ROSENBERG, :

Defendants-Appellees. :

- x

STATEMENT PURSUANT TO RULE 5531

1. The index number in the Court below is 20522/85.

2. The full names of the original parties are as above and there has been no change.

3. This action was commenced in the Supreme Court of the State of New York, County of Kings.

4. The action was commenced by service of the summons and complaint on August 27, 1985, August 28, 1985, and September 3, 1985, for the nine defendants. Four of the nine defendants were re-served with an alias summons and complaint on October 29, 1985, October 30, 1985, and November 1, 1985. Two of the four defendants who were re-served were again

re-served with a pluries summons and complaint on November 27, 1985. The only answer served was the answer of defendant Lewis Rosenberg, on September 16, 1985.

5. Plaintiff has brought this action for relief for employment discrimination based on sex and religion as to her pension benefits. Defendants conspired to fraudulently conceal the causes of action which damaged plaintiff and deprived plaintiff of equal protection of laws and due process rights. The action also includes, on the part of defendants, fraud, gross negligence, and breach of fiduciary and contractual duty.

6. All defendants made motions to dismiss the complaint which motions were granted. Plaintiff's appeal is from:

a. An order entered in the office of the County Clerk of Kings County, the 19th day of December, 1985 (Shaw, Jr.), as against the City Defendants and the Defendant Department of Insurance;

b. A memorandum decision entered in the office of the County Clerk of Kings County, the 2d day of January, 1986 (Bernstein), as against Defendant Lewis Rosenberg; and

c. An order entered in the office of the County Clerk of Kings County, the 19th day of February, 1986 (Hurowitz), as against the City University Defendants and the Defendant Professional Staff Congress/CUNY.

The above three orders have been consolidated into one appeal for the purposes of the review proceedings.

7. Appeal is by the Full Record Method.

STATEMENT OF QUESTIONS PRESENTED

1. Did the Supreme Court of the State of New York, County of Kings, in three Orders, abuse their discretion and power by improperly dismissing plaintiff's complaint after reading and hearing plaintiff's claims, sets of facts, and documentation of:

a. Employment discrimination based on plaintiff's sex and religion, which was achieved by the fraudulent diminution of plaintiff's employment benefits and which was documented by plaintiff? The Courts below did not respond to the allegations of discrimination and fraud.

b. Defendants' conspiracy to fraudulently conceal the causes of action as to plaintiff's pension and legal rights, which conspiracy was documented and which conspiracy continues to date? The Courts below did not respond to the allegations of conspiracy as to plaintiff's pension and legal rights.

c. Deprivation of plaintiff's Constitutional civil rights, right to equal protection of laws, due process rights, right to counsel, and right to trial by jury? The Courts below did not respond.

d. Defendants' breach of their contractual and fiduciary duties? The Courts below did not respond.

e. Defendants' grossly negligent acts? The Courts below did not consider and did not respond.

f. Abuse of plaintiff's person, rights, and property? The Courts below did not consider and did not respond.

g. Extraordinary steps taken by defendants to prevent plaintiff from retaining legal counsel and gaining pension and legal information? The Courts below did not consider and did not respond.

2. Did the Supreme Court commit manifest and reversible errors as to the following:

a. Improper dismissal of issues of fact, on motions, without any semblance of proper hearing of the facts?

b. Failure to consider that no hearing of the issues herein has been held to date?

c. Failure to consider that there has been no investigation of the claims herein?

d. Insufficient consideration of the causes of action and of defendants' failure to present any documentation disputing said claims?

e. Failure of Court Orders to set forth nature of action and grounds for dismissal?

f. Failure of Courts to state act or acts and Law by which a four-month Statute of Limitations accrued, was required, and was applicable?

g. Failure to consider the 3-year, 6-year, continuing violations, and tolling-by-reason-of-fraud provisions of the Statute of Limitations applicable to the causes herein?

h. Courts' failure to deliver opinion and reasons as to the causes, thereby depriving plaintiff of right of counter-arguing and amending pleadings?

i. Failure to place two of the three motions on the record?

j. Tactics used to take advantage of plaintiff's forced pro se status?

k. Tactics used by defendants to prevent discovery of the causes of action and to cause expiration of time?

l. Failure to consider that defendants continue to refuse to give plaintiff copy of her records, as to which records plaintiff has documented errors therein?

m. Failure to consider that altered correspondence was used on the part of the City University Defendants and Insurance Department Defendant?

STATEMENT OF FACTS

A. AS TO AMOUNT OF PENSION (FIRST AREA OF CAUSES OF ACTION)

Plaintiff was employed as a professor at New York City Technical College ("College") for 34 continuous years from September 1, 1948, date of original appointment, to September 1, 1982, effective date of retirement. Prior to retirement, the Teachers' Retirement System of the City of New York ("Retirement System") would not answer any questions or provide any information and instructed plaintiff to go to the Professional Staff Congress/CUNY ("Union") for any needed information. Plaintiff received her first pension check on or about January 2, 1983, with no explanation and no accounting of plaintiff's moneys. Over a period of time, in response to questions, plaintiff received five diverse versions of the calculation: three from the Retirement System (pp. 346, 348, and 349),* one from the Union pension officer (p. 608), and one from the City University of New York pension officer (pp. 547-548); each of which version was intended to convince plaintiff that the pension was correct, each of which concealed the correct pension plan, and each of which included material errors and/or omissions. Plaintiff did not know at the time of retirement and until July 17, 1985, that her pension had been discriminatorily and fraudulently calculated for 29 years of service instead of for the 34 years to which she was entitled. All five versions concealed this. In addition,

---

*The page references set forth in parentheses are to pages in the Record on Appeal.

the Retirement System informed plaintiff in January, 1983, that the pension plan which applied to her was in the Administrative Code of the City of New York, Chapter B20. To support the reference to B20, the versions of the calculation were in the semblance of the plan in B20, §41.2. However, due to misstatements and misrepresentations included in the versions, the amount of the pension benefit is an amount for 29 years of service and not 34 years. What plaintiff did not know until July 17, 1985, was that her pension had been calculated according to New York State Pension Laws at the rate of 2-1/2% for 29 years, which is the rate under State Law for those with service up to 30 years. For those with 30 years of service and over, a 30-year retirement allowance is applied. Thus, not only was plaintiff deprived of five of her service years in the calculation of the pension, but she was also deprived of the 30-year retirement allowance. By all of which, plaintiff has been deprived of upwards of $10,000 annually in the amount of her pension.

Misleading plaintiff as to the applicability of B20 caused plaintiff to expend an inordinate length of time researching the complex Code since not one of the defendants would answer any questions about B20 and not one of the more than 30 attorneys with whom plaintiff consulted would give her any information about B20 or her pension benefits or her legal rights.

As to the calculation of the pension, the facts show that all of the defendants discriminated against plaintiff and

fraudulently conspired to conceal plaintiff's benefits to deprive her of her maximum and correct pension, as follows:

1. Each of the defendant Retirement System's three versions did not use a 30-year retirement allowance calculation (pp. 346, 348, and 349). Each made reference to outside service which is contradicted by the Retirement System's own certification of plaintiff's service as 34 years of New York City service (p. 347). In the letter from Mr. Jonathan Schwartz (p. 348), the additional errors include use of Increased-Take-Home-Pay accumulation after 25 years instead of the entire amount as required by Law and as used on the Report of Actuary (p. 346) and not allowing any addition to the pension for the amount of money in the Annuity Savings Fund which is depicted as a deficit when in fact it had a balance which is shown in the other two versions (pp. 346 and 349). In Mr. Wallace Sullivan's version (p. 349), the additional errors include Increased-Take-Home-Pay accumulation after 25 years instead of the entire amount and a minimum accumulation amount for individuals with less than 20 years of service. To date, the Defendant Retirement System has not stated what the pension plan is. It has not made any response to the above claims; it has not explained the differences in the three versions supplied above. The Pension System is allowed by the Court to ignore the calculation of the pension which is a fraudulent and discriminatory calculation, as the affidavits and memoranda of the Pension System show.

2. Plaintiff presented her pension questions to defendant Teachers' Retirement Board of the City of New York ("Retirement Board") and requested a hearing, to which presentation (pp. 220-265) and request for hearing the Retirement Board never responded.

3. As directed by the Pension System, plaintiff went to her Union for pension information prior to retirement. The defendant Union's pension officer gave plaintiff a worksheet

estimating the amount of the pension which was in the semblance of Code B20 and which concealed the correct retirement allowance for persons with more than 30 years of service (p. 608). In subsequent meetings and correspondence with the pension officer and Union, the correct pension allowance was never revealed to plaintiff. Not only did the pension officer conceal the 30-year allowance, she did not inform plaintiff that there is a 35-year plan. As a pension officer who is providing information to a Union member who has 34 years of City service and one year of private school service, not informing her of a 30- and 35-year plan is concealment of material fact. The Union provided the first discriminatory and fraudulent version of the pension. The pension officer used an improper form to make it appear that all Union members are counseled in the same manner, which plaintiff discovered well after retirement was far from the truth. The Union has not responded to plaintiff's claims. The Union does not distribute pension information widely to Union members; it counsels members of a large group of teachers individually which results in the most invidious form of discrimination. The Union is allowed by the Court to ignore the calculation of the pension which is a fraudulent and discriminatory calculation, as the affidavits and memoranda of the Union show.

4. Plaintiff requested information from the pension officer of defendant City University. He refused to meet with plaintiff until after retirement; at that point he sent her a version of the pension calculation which was in the semblance of Code B20 (pp. 547-548) and included errors as to plaintiff's service and loan despite the fact that he had examined the Pension System's certification of plaintiff's time as 34 years of City service and despite the fact that he had examined plaintiff's most recent Statement of Accounts which showed the amount in her Annuity Savings Fund, an amount which could not have resulted in a deficit.

City University's pension officer concealed the correct pension allowance from plaintiff in conspiracy with the other defendants.

5. Plaintiff met with the pension officer at the College who did not give her any information as to the pension other than to say that plaintiff has 34 years of service. As to the defendant College, concealment was total. The College blocked plaintiff from acquiring any information which might have assisted plaintiff even to the point of not providing the name of an earlier pension system of which plaintiff had been a member. The College discriminated against plaintiff as to all the claims herein and conspired to fraudulently deprive plaintiff of her correct payroll, employment, and retirement benefits. Additional deprivations are detailed below.

6. Plaintiff met with defendant Lewis Rosenberg ("Union attorney"), who was retained by the Union to represent plaintiff with respect to the pension issues (pp. 467-468). The Union Attorney, after viewing plaintiff's papers, did not inform plaintiff as to the nature of her case, her pension benefits, or her rights. The Union Attorney and his associate differed as tc the applicable Statute of Limitations, the former viewing it as a 4-month limitation and the latter as a 3-year limitation. After the first visit on February 15, 1983, plaintiff was not contacted by the Union Attorney until April 5, 1983, when he unilaterally disengaged himself from the case by letter (p. 469), with no clarification as to the Statute of Limitations and no information as to plaintiff's case or rights. Not only did the Union Attorney conceal the correct pension information from plaintiff, he also did not safeguard plaintiff as to the Statute of Limitations. The Union Attorney joined the conspiracy to deprive plaintiff of her correct pension benefits.

7. Since the Department of Insurance of the State of New York ("Insurance Department") is the overseer of the

Pension System, plaintiff sent a presentation of her questions to the Insurance Department (pp. 342-371). It never responded to her presentation. The defendant Insurance Department fraudulently concealed the pension benefits to which plaintiff is entitled. The discriminatory and fraudulent acts of the Insurance Department date from April 5, 1984, when plaintiff presented her claims, to June 7, 1985, and forward, when the Insurance Department in its last letter to plaintiff (p. 405) continued its fraudulent and discriminatory statements that everything had been done correctly according to law and all errors had been corrected. Nowhere has the Insurance Department shown how it arrived at the conclusion that everything had been done correctly and all errors had been corrected. A simple reference to the dates of letters in which the Insurance Department found the correct pension amount and correction of all errors would have sufficed. Instead, the Insurance Department ignores the pension amount, does not respond to any questions, and shows no evidence leading to its conclusions. (See complete file of letters as to Insurance Department, pp. 342-407 of the Record on Appeal.) The Attorney for the Insurance Department uses some of these letters to support her statements and arguments in her Affidavit and Memorandum in Support of Motion to Dismiss the Complaint (pp. 310-321). However, in using the letters, the Attorney for the Insurance Department completely eliminates all the documentation plaintiff enclosed with each letter which essentially resulted in using letters of transmittal and eliminating all the proof. The letter which she uses as her "Exhibit G," (pp. 318-320) for example, indicates at the end that there were 7 enclosures which did not appear in Exhibit G. Thus, the Attorney eliminated plaintiff's documentation of pension and service fraud. (See plaintiff's "Exhibit K" in opposition, pp. 394-404 of the Record on Appeal.) As to the final letter from the

Insurance Department, dated June 7, 1985 (Plaintiff's Exhibit L, p. 405), the Attorney for the Insurance Department uses the same letter in her Exhibit H (p. 321) with the exception that the date was altered to March 27, 1985. The Insurance Department avoids plaintiff's claims by ignoring the documentation and making generalizations to the effect that everything has been done correctly without documenting the generalization. The Court below allowed this as it was allowed for the other defendants.

The above actions of the defendants as to the calculation of the pension are discriminatory as to plaintiff on the basis of her sex and religion since the only teachers who, to plaintiff's knowledge, are receiving the 30-year retirement allowance are male and/or non-Christian teachers. All of the defendants concealed and continue to conceal the correct amount of the pension as all of their motion for dismissal papers clearly show. All of the defendants, who are in a fiduciary relationship with plaintiff and who are pension experts, conspired to deprive plaintiff of the correct amount of her pension. Total concealment of the pension facts by fiduciaries and experts could only have occurred as part of a conspiracy.

B. AS TO CREDIT FOR PRIOR SERVICE (SECOND AREA OF CAUSES OF ACTION)

The fraudulent calculation of the pension for 29 years instead of for 34 years is one of four major areas of causes of action. The second one is the fraudulent method by which plaintiff's prior service was charged and credited. The Pension System required plaintiff to pay approximately $3,500 to regain credit for her first five years at the College since she had

withdrawn her contributions from the New York State Public Pension Systems of which the faculty were members during the years 1948-1953. Of that amount, $2,500 was not placed in plaintiff's Annuity Savings Fund and as described above in A, five years of service were not included in the pension calculation despite the payment for that service. This cause of action followed essentially the same route as the first one detailed above for the calculation of the pension.

Under New York State Law, plaintiff should have been given automatic credit for her prior service since it was service in employment during which she became a member of the Retirement System. The Law, as it appears on the forms of the Retirement System (p. 400), provides, as follows:

> "PRIOR SERVICE:
>
> When you have rendered the equivalent of at least five full years of service after July 1, 1976 or after last joining, you are entitled to credit for previous service if retirement credit has previously been granted for such service in any public retirement system in New York. In order for such prior service to be credited, you must properly fill out page three of this application.
>
> "You are entitled to immediate credit for prior service as follows:
>
> (a) Service that is otherwise creditable, which was rendered while you were ineligible for membership in a public retirement system or,
> (b) If it was rendered during which employment you became a member of this System.
> (c) Service credit that was transferred from any public retirement system in New York City or New York State."

The prior-service rules were concealed by each and every defendant to whom plaintiff had shown certification of her service by the Retirement System and her Statement of Accounts and this

included defendants Retirement System, Retirement Board, City University, Union, Insurance Department, and Union Attorney. After retirement, plaintiff discovered that male colleagues had been credited automatically for service at the College for years when they had not made any contributions to a retirement system. The College not only concealed the rules from plaintiff, it also misstated them, fraudulently, to prevent plaintiff from acquiring the credit to which she was entitled automatically. The College also fraudulently misstated the rules which prevented plaintiff from purchasing one year of private school teaching (pp. 359-369).

This second area of causes of action is replete with misinformation given to plaintiff by the College and given by the College to the Retirement System, among others. Since the items are too numerous to fully describe herein, plaintiff sets forth the following example: The Retirement System improperly stated that the plaintiff did not hold membership in any retirement system during the period 1951-1953 (p. 368). Not only was this not true, since plaintiff was a member of a retirement system for all of her 34 years; but also, the break in membership should not have affected credit for prior service even if it were true according to the rules for prior service which are imprinted on the forms of the Retirement System. Plaintiff provided proof of her continuous membership (p. 374), which required years of searching due to the obstructive tactics of defendants and which the defendants and the Courts below ignored. Obviously, the College had not submitted correct information to the Pension

System; and the Pension System, on the other hand, was remiss in not searching for this information at the point of plaintiff's entry into membership.

As to this second area of causes of action, the improper charging and crediting of plaintiff's prior service, the defendants do not respond to any of the above claims as all of their motion papers clearly show. The defendants do not respond to any of plaintiff's claims of discrimination, conspiracy, fraud, and breach as to this service. Plaintiff was discriminated against on the basis of sex since male colleagues had their service credited automatically; the defendants conspiratorially concealed the rules for crediting prior service with not one defendant informing plaintiff of the rules; the service was charged and credited fraudulently; and defendants breached their contractual and/or fiduciary duties to plaintiff.

C. AS TO MAINTENANCE OF STATEMENTS OF ACCOUNTS (THIRD AREA OF CAUSES OF ACTION)

The facts herein contribute to a third area of causes of action, the improper maintenance of plaintiff's Statements of Accounts, which includes many uncorrected errors, many omissions, use of two membership numbers, not putting plaintiff's account in computer, and Retirement System's refusal to give plaintiff a copy of her records. Again, since the errors and omissions are too numerous to itemize and detail herein, plaintiff sets forth the following example: On her 1970 Statement of Accounts which was sent to plaintiff for the first time in 1983, $14,985.64 is

posted as the amount of funds transferred from New York City Employees' Retirement System; the amount should be $15,675.66 as shown on the records of the two Retirement Systems (pp. 416-417). On the same Statement, the value of the Tax Deferred Annuity credits equals $6,037.38. At the bottom of the form, under Gross T.D.A., it is listed as $5,740.40. Although errors in the Statements of Accounts have been brought to the attention of most of the defendants, such as the omission on the 1981 Statement of the $2,500 purchase-of-service money, this cause of action is ignored. No defense is made. No one shows where the corrections were made. This cause of action is simply ignored by the defendants and the Courts below. Yet, plaintiff's Statements of Accounts are incomprehensible and replete with errors (pp. 350-358).

This third area of causes of action illustrates definitively the absence of defense and the weakness of the position of defendants. The defendants do not controvert any thing specifically. They do not show that what plaintiff is claiming is not true. They show no signs of having investigated any thing. Their only response is to make concluding remarks to the effect that everything has been done correctly and all corrections have been made without even an indication of to what they refer. On March 27, 1985, the Retirement System concluded that everything had been answered and everything had been done correctly (p. 274). On January 19, 1984, plaintiff sent a letter to the Executive Director of the Pension System in which she identified 25 questions which had not been completely answered (pp. 266-270).

The Executive Director responded in a letter dated May 30, 1984, in which he stated that the first five questions which had to do with the pension calculation would be answered in a separate communication from Mr. Jonathan Schwartz, Chief Actuary (p. 272). Those five questions have not been answered to date. Yet, the defendants continue to state that everything has been answered. The defendants use the same approach to all the causes of action. They simply say that everything has been calculated correctly, with no proof, and they are allowed to hide behind such false statements.

D. AS TO DISCOVERY OF THE CAUSES OF ACTION

Due to the conspiracy on the part of all defendants to conceal the causes of action, plaintiff discovered the causes bit by bit after retirement in a piecemeal fashion, the last crucial piece of which was discovered July 17, 1985, as follows:

1. After retirement, plaintiff discovered in conversing with a colleague that he had been advised by the Retirement System to withdraw his application for retirement which he had filed after 29 years of service and continue to work until he had completed 30 years of service in order to add a substantial amount to his pension benefit by virtue of the 30-year retirement allowance. This was the first time plaintiff had heard of such allowance. Then, plaintiff learned of additional instances of this and this led plaintiff to the discovery that there is a 30-year retirement allowance which had been concealed by all defendants and that she had been discriminated against on the basis of her sex and religion since the teachers she knew who were receiving the 30-year benefit were males and/or non-Christians.

2. Later, in the period after retirement, plaintiff discovered in a Union publication that the pension allowance is 2-1/2% for each year of service. This piece led to plaintiff's discovery that the pension plan applicable to her is not in the Administrative Code as the defendants had led her to believe but in New York State Law. Plaintiff could not understand the applicability of the 2-1/2% calculation because she kept multiplying it times her 34 years of service and the results were not consistent with what plaintiff had discovered earlier.

3. Finally, on July 17, 1985, plaintiff received a communication from City University in which her service at the College was certified as having ended in 1977 instead of 1982 (pp. 515-517). This led plaintiff to the discovery that her pension had been calculated for 29 years at the rate of 2-1/2% instead of for 34 years with a 30-year retirement allowance.

With the information acquired from the July 17, 1985, communication, the causes were developed for legal action and for that reason plaintiff served the summons and complaint in this action on August 27, 1985. At that point, plaintiff had discovered the discrimination against her on the basis of sex and religion; the facts pointing very clearly to a conspiracy on the part of all the defendants, attorneys, agencies, et al., to conceal plaintiff's benefits and thereby deprive her of the correct benefits; the fraudulent position that everything was correct; and the breach of contractual and fiduciary duty, a duty which required the defendants to be scrupulous in the information and responses they gave in their relationship to plaintiff..

E. AS TO LEGAL REPRESENTATION

After retirement, plaintiff expended much time and energy in trying to get answers to her pension questions. When the Union Attorney unilaterally ended his representation of plaintiff, she began seeking another attorney. She consulted with over 30 attorneys, none of whom would represent her. She sought a referral from the President of the Bar Association who referred her to a Surrogate work attorney. Since he lacked the needed expertise, he would not even discuss the case with plaintiff. Plaintiff expended a considerable length of time consulting with attorneys who not only would not give her any information but in many instances misinformed her. In refusing to represent plaintiff, the attorneys whom plaintiff consulted, in effect, make the determination as to whether or not plaintiff will have her Constitutional right to a trial by jury of her causes. They also contribute materially to the passage of time. Thus, plaintiff realized that she would have to acquire some legal knowledge in order to be able to deal with the pension problems; she, therefore, enrolled in Law School. The necessity of law school obviously had an effect on the start of legal action. However, plaintiff started this action in August, 1985, in deference to concern over applicable 3-year limitations, among other concerns. Throughout, plaintiff continued to seek representation by an attorney, to no avail. The facts which emerge from consultation with over 30 attorneys and the failure to have such representation point clearly to a conspiracy to prevent such representation.

F. AS TO GOVERNMENTAL AGENCIES

Plaintiff attempted to resolve the problems by presenting the questions to all levels of boards, commissions, and/or agencies, none of which responded and/or showed any evidence of investigation, as follows:

1. Plaintiff presented questions to the Retirement Board at its October, 1983, meeting. The Board never responded although the Chairman indicated that a response would be forthcoming after a review of the matter. The Comptroller of the City of New York sits on the Retirement Board as a member thereof. His deputy received the hand-delivered presentation for him. The Comptroller never responded to the issues herein.

2. Plaintiff presented the questions to the Insurance Department as indicated above on pages 9-11 and it never responded.

3. Plaintiff filed with the Equal Employment Commission on June 20, 1985, after earlier attempts to file had been blocked. The EEOC has not shown signs of any investigation or of even contacting the respondents.

4. The EEOC claims were filed with the New York State Division of Human Rights early in July, 1985. The State Division has shown no signs of contacting all of the respondents and no signs of any investigation. Prior to July,1985, the State Division had blocked all of plaintiff's efforts to file with it.

5. In addition to the 9 defendants herein, Robert Abrams, Esq., Attorney General of the State of New York, was served with the summons and complaint, in August, 1985. Then, his office assumed the representation of four of the defendants herein, on behalf of whom two motions to dismiss the complaint were made (pp. 301-331, 491-530). There is no evidence of investigation of plaintiff's claims of discrimination, conspiracy, fraud, and breach.

6. The Corporation Counsel of the City of New York, Frederick A. O. Schwarz, Jr., Esq., is representing three defendants herein. His office not only does not controvert the validity of the claims, but the attorney for the City admits the claims as true for the motion which is, in effect, admission of discrimination, conspiracy, fraud, breach, and gross negligence.

G. DEPRIVATION OF RIGHTS (FOURTH AREA OF CAUSES OF ACTION)

Finally, the facts herein constitute a fourth area of causes of action; namely, deprivation of rights, as follows:

1. To date, plaintiff has been denied her Constitutional due process rights. There has been no hearing of the claims herein. None of the boards, agencies, or commissions to which plaintiff applied in her attempts to resolve the pension issues would grant her a hearing. They tried to block her from filing in some instances; they did not assign a file number in some instances; and none of them investigated or held a hearing of the claims herein.

2. To date, plaintirf has not received an accounting of her pension moneys.

3. To date, not one defendant has stated what the pension plan is which applies to plaintiff and what the rules for crediting prior service are.

4. To date, plaintiff has not received a copy of her records from the Pension System, despite many requests and despite the inclusion of many errors in those records.

5. To date, plaintiff has not received a copy of her payroll and service records from the College, despite many requests and despite the fact that they have been the source of much of the misinformation which has been supplied to the Pension System. In a letter to the Retirement System, for example, the College certified plaintiff's promotion to assistant professor five years later than it actually took

place (p. 550). Plaintiff was promoted to assistant professor in 1954 and not 1959 as shown. This appears to be another item in the conspiracy to deprive plaintiff of her 34 years of benefits and another item of evidence to show that records which plaintiff is not allowed to see are the source of material errors.

6. Plaintiff has been blocked from retaining proper legal representation.

7. Plaintiff has been deprived of her right to fair and equitable treatment by all of the defendants herein and instead plaintiff has been discriminated against due to her sex and religion.

8. Plaintiff has been deprived of equal protection of laws by the defendants, attorneys, agencies, and the Court.

9. Plaintiff has been subjected to abuses of her person, time, and property. A bit of information which should have taken an instant on the part of the defendants to give required years of searching on the part of the plaintiff. To prevent plaintiff from acquiring any pension information, the Union went so far as to dismantle its library.

10. Plaintiff has been audited by the Internal Revenue Service over 12 times since 1968, the year of entry in the Retirement System.

11. Plaintiff is not in computer at Social Security and has had years of zero contributions for years during which she made maximum contributions.

12. Plaintiff rolled over Tax Deferred money from the Retirement System to a bank; the bank did not place this amount in computer and plaintiff had difficulty obtaining a statement for this money.

As shown by the above, whenever plaintiff's employment moneys are involved, plaintiff's moneys are not part of the record and many errors follow and go uncorrected.

The causes of action are numerous. Plaintiff attempted to detail them as fully as possible in her Complaint. She provided documentation of the claims as Exhibits attached to her papers in opposition to the motions to dismiss.

The defendants do not defend or argue against the causes of action. They do not state that plaintiff's pension is correct; they do not state what the pension plan is. They do not state that plaintiff's prior service was credited properly; they do not state the rules for crediting prior service. They are not required to give plaintiff copy of her records. They are not required to produce records or documentation or proofs. They rely, in the main, on a short, inapplicable statute of limitations, as to which they do not state with certainty the wrong and the date relevant thereto. The defendants acted in concert to attempt to allow the statute of limitations to expire by maintaining the fraudulent position that everything had been calculated correctly, by concealing the causes of action, by blocking the plaintiff from the acquisition of pension and legal information, and by attempting to prevent her from taking legal action.

H. THE PROCEEDINGS BELOW

The nine defendants represented by four attorneys brought motions to dismiss the complaint as against all of the defendants, as follows:

1. The motions to dismiss of the City Defendants (pp. 148-275) and the Insurance Department Defendant (pp. 301-331) were heard in Kings County, Special Term, Part I (Shaw, Jr.), on November 13, 1985.

2. The motion to dismiss of the Defendant Attorney Rosenberg (pp. 439-454) was heard in Kings County, Special Term, Part I (Bernstein), on December 16, 1985.

3. The motions to dismiss of the City University Defendants (pp. 491-530) and the Defendant Union (pp. 571-597) were heard in Kings County, Special Term, Part I (Hurowitz), on December 20, 1985.

No record was made of the November 13, 1985, hearing. Kings County is a court of record and the proceedings should have been recorded; however, plaintiff was not even given a choice of having a recorder present. Further, the records of the Chief Court Reporter show that a reporter was present in Special Term on November 13, 1985. The Special Term Clerk's office would not give plaintiff any information on the settlement of the order; thus, plaintiff was blocked from the settlement. The Court (Shaw, Jr.) signed a memorandum decision (p. 12) and a judgment (pp. 9-11) dismissing the complaint, both of which decisions do not state the nature of plaintiff's action and the causes of action and both of which decisions do not state which claims are subject to a four-month statute of limitations and why a four-month statute is applicable. The memorandum decision simply states:

> "Plaintiff's law suits * * * are subject to a four month Statute of Limitations." (p. 12, second ¶)

The judgment simply states:

> "ADJUDGED that plaintiff's causes of action against the City defendants and the Insurance Department are barred by the four-month statute of limitations; * * *" (p. 11, last ¶)

Do the above two statements mean that plaintiff's claims of employment discrimination, civil rights violations, concealment

of causes of action, fraud, breach, and gross negligence are barred by a four-month limitation? None of the causes of action is time barred and none is subject to a four-month statute.

No record was made of the December 16, 1985, hearing and again plaintiff was not given a choice and again the records of the Chief Court Reporter show that a reporter was present in Special Term on December 16, 1985. Plaintiff received a proposed order from the Attorney for Defendant Rosenberg against whom the Court (Bernstein) dismissed the complaint, for settlement on February 14, 1986; however, Special Term disclaimed receipt of such order. The Court signed a memorandum decision which was filed January 2, 1986; again plaintiff was prevented from an input in settlement. The memorandum decision states that the causes of action are concealment, conspiracy, and breach of contract and fiduciary duty; however, it then concludes:

> "Obviously, the plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages." (p. 21)

Plaintiff is not certain as to the intent of the above decision. Defendant Rosenberg breached his contract when he unilaterally withdrew and breached his fiduciary duty when he concealed all pension and legal information from plaintiff. He was negligent in the conduct of plaintiff's case with respect to the lapse of time and time limitations. He was a part of the conspiracy to deprive plaintiff of her employment benefits as evidenced by his acts of concealment. These causes are set forth in plaintiff's complaint as are the damages. Thus, plaintiff questions

the lack of a Court response to the causes of action and how it was decided that plaintiff suffered no damages.

A record was made of the December 20, 1985, hearing (pp. 32-66). Plaintiff received several Notices of Settlement, one for January 7, 1986, and another for January 29, 1986, and in each case Special Term disclaimed receipt of the proposed order. Again, plaintiff was prevented from participating in settlement. The Court signed an Order (pp. 29-30) on February 14, 1986, dismissing the complaint against the City University Defendants and the Defendant Union. The order is devoid of any statement as to the nature of plaintiff's action and does not mention one cause of action. In addition, the Order does not make any statement as to a reason for dismissal. On the record (pp. 61-65), the Court (Hurowitz) does not refer to any of plaintiff's causes of action and goes on to conclude that the motions to dismiss are granted on the grounds that Judge Shaw made the decision on the question of law that the four-month statute applies in this case and that the Court in this case could not go against Judge Shaw's decision. Plaintiff attempted to get a response to fraud and the statute of limitations; however, the Court would not respond to fraud (p. 65). It appears that this decision of the Court was based on insufficient consideration of the complaint and of all the motion affidavits and memoranda and exhibits. Since all of these papers are submitted on the day of the hearing, sufficient consideration could not be given to them to arrive at a decision at the end of the hearing.

All three Court decisions granting the motions to dismiss the complaint simply ignore plaintiff's claims of employment discrimination and violations of her Constitutional and civil rights. Discrimination against female City University professional instructional staff members on the basis of sex has been established by the decision in Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 768 (1983). These claims are not subject to a four-month time limitation. The Courts made no decision on conspiracy, concealment, and fraud. They ignore these claims, which are documented by plaintiff, as the defendants ignored them. These claims are also not subject to a four-month time limitation. All three Court decisions did not show how the complaint failed to state claims which establish causes of action. The Courts did not consider that the defendants did not refute any of plaintiff's pension facts and that they did not present any documentation disputing said facts. All three Courts improperly dismissed issues of fact without any semblance of due process. Plaintiff's claims of documented fraud were dismissed and the issue of equitable tolling due to fraud was dismissed. All the issues of fact herein were dismissed improperly on a motion to dismiss.

The Courts dismissed plaintiff's 33-page complaint with the quick statement and no opinion that plaintiff's "law suits" are subject to a four-month Statute of Limitations and that plaintiff's causes of action are barred by the four-month statute of limitations. The Courts show no evidence of considering the timely discriminatory and fraudulent acts which are not

time barred and which continue, as follows:

(1) The final discriminatory and fraudulent decision of the Retirement System that everything had been calculated correctly as set forth in its letter of March 27, 1985 (p. 274);

(2) The final discriminatory and fraudulent decision of the Department of Insurance that everything had been calculated correctly as set forth in its letter of June 7, 1985 (p. 405);

(3) The discriminatory and fraudulent certification by City University of New York of plaintiff's service as 29 years instead of 34 years as set forth in its communication of July 17, 1985 (p. 570);

(4) The continuing discriminatory and fraudulent amount of plaintiff's pension;

(5) The discriminatory policy of the defendants as to which male and/or non-Christian teachers, who are similarly situated as to plaintiff, continue to be granted 30-year retirement allowances;

(6) The tolling of all time limitations due to the fraudulent use of 29 years for plaintiff's 34 years and the fraudulent requirement that plaintiff's College service be purchased as "outside service"; and

(7) The extraordinary steps taken by defendants to prevent discovery of the causes of action herein which elongated the time as to each phase and proceeding herein.

Plaintiff filed with the EEOC on June 20, 1985, which was timely in view of the discriminatory acts outlined above.

Further, plaintiff served the summons and complaint in this action on August 27, 1985, which was timely as to each of the discriminatory and fraudulent acts committed herein, seven of which are outlined above on page 27 herein.

ARGUMENT

PRELIMINARY STATEMENT

The Complaint sets forth causes of action for employment discrimination as a result of which plaintiff was deprived of pension benefits which male and/or non-Christian teachers received and which discriminatory policy continues to date; the Complaint sets forth causes of action for conspiracy on the part of all defendants to deprive plaintiff of her benefits by fraudulently concealing the causes of action, which conspiracy continues to date; the Complaint sets forth causes of action for deprivation of plaintiff's Constitutional due process rights as evidenced by the total absence of a hearing of the issues herein; and the Complaint sets forth causes of action for fraud, breach of fiduciary and contractual duties, and grossly negligent acts. The Courts below, in not responding to all of the above causes, contribute to them and to the deprivation of plaintiff's rights. The Courts did not identify the acts by which a four-month time bar was determined, did not identify the statute of limitations, and did not deliver opinions, reasons, and grounds for their decisions. By so doing, the Courts deprive plaintiff of countering the Courts' positions.

COUNTER-STATEMENTS AND ARGUMENTS OF THE CASE

A. As to the City Defendants (City of New York, Retirement System, and Retirement Board)

The moving papers of the City Defendants are riddled with errors, misstatements, and omissions. The attorney for the City Defendants, Frederick A. O. Schwarz, Jr., Corporation Counsel of the City of New York, by Norma Kerlin, A.C.C., and Suzanne Lank, A.C.C., in the moving papers, argues that plaintiff's first cause of action is a "failure to counsel" claim dating back to September 1, 1982 [p. 150, ¶6(a); p. 157, ¶(1)]; and that the second cause of action is a "failure to credit" claim which goes back even further to 1981. Attorneys Kerlin and Lank go on to state that the said two claims are two singular incidents unrelated to any ongoing or recent discriminatory acts by City Defendants and that, therefore, plaintiff cannot use continuing effects of past discrimination to overcome the statute of limitations (pp. 157-160, 299). In the complaint, plaintiff summarizes her first two areas of causes of action as "* * * plaintiff has been deprived of a pension benefit for 34 years of New York City service and instead has unlawfully and improperly and discriminatorily been given a pension benefit based on 29 years of service. * * *" (p. 82, ¶THIRTY-THIRD) The attorneys for the City Defendants studiously avoid the fact that plaintiff has 34 years of teaching service and her pension was calculated for 29 years of service. This was done so that the 30-year retirement allowance would not be used, discriminatorily, in the case of plaintiff and her pension was thus calculated at 2½% per year of 29 years of service.

This discriminatory and fraudulent calculation of the pension was concealed from plaintiff by all of the defendants. The concealment is evident in the March 27, 1985, letter from the Executive Director of the Retirement System in which he states that plaintiff's retirement allowance has been properly and correctly computed according to applicable laws and that this letter ended any further response to plaintiff. The concealment is also evident in the moving papers of all of the defendants. Nowhere do any of the attorneys respond to the calculation of plaintiff's pension for 29 years instead of for 34 years. Nowhere do any of the attorneys state the rules for crediting prior service. Again, they studiously avoid the fact that plaintiff's prior service should have been automatically credited. The rules for prior service were concealed and continue to be concealed by all of the defendants.

The attorneys for the City Defendants argue that plaintiff's fraud claim fails due to the fact that plaintiff's assertion of defendants' concealment relied on the presupposition that defendants had a duty to counsel plaintiff (p. 298). The issue here is that the defendants omitted material information and concealed the elements of fraud in the calculation of the pension and the crediting of prior service. The issue as to the fraud is not the presupposition of duty to counsel; it is the concealment of the fraud which was done by all of the defendants. The concealment continues as is evidenced by the moving papers of all parties herein. The discrimination continues as is evidenced by a male, non-Christian teacher who was to retire in 1985 and instead is now completing his 30th

year to retire in 1986 and earn the 30-year retirement allowance of which plaintiff was deprived for her 34 years, in addition to being deprived of 5 years of service. Plaintiff was not attempting to impose a duty on defendants to counsel her on the "intricacies of the pension plan" (p. 298); plaintiff was seeking information in order to make decisions for herself. Instead of answers, plaintiff was the receiver of misstatements and omissions of material information. The policy of discriminatory counseling, however, continues; the teacher who is in progress of continuing an extra year to his 30th year was obviously the receiver of information and counseling that was not extended to plaintiff.

Plaintiff questions the failure of the City attorneys to refer to the pension amount for accrual of the cause of action; the attorneys use "failure to counsel" and "failure to credit, only, for purposes of accrual. In this action in which the amount of the pension is the central issue, failure to refute the pension amount or even to argue it as to accrual seems to be an indication of a weak position or no position. None of the defendants address the discrimination, fraud, concealment, civil rights violations and breach as to the pension issues as the Courts below did not do also.

The attorneys for the City Defendants ignore the fact that the fiduciary Retirement System required plaintiff to purchase five years of her College service as outside service and then proceeded to eliminate those years from the calculation. Plaintiff, at the time of being required to make the purchase, did not know the rules of automatic credit. The rules were

concealed by everyone and continue so to be as is evident from all the motion papers and Court orders herein. The statute of limitations for a fraudulent act in New York is six years. CPLR §213. Since the purchase took place in 1981, the claim is not time barred, even without taking into consideration that discovery by plaintiff occurred well after retirement. The City Attorneys do not show that plaintiff was informed of the rules for crediting prior service at the time of purchase. Plaintiff documents that she was not. See pp. 254-263 of the Record on Appeal. Are the City Attorneys saying that discovery has no effect on accrual?

It is difficult to counter-argue positions that are not stated. The above arguments as to the positions of the City Attorneys are not intended as complete arguments of all the misstatements made in their papers.

B. As to Defendant Insurance Department

The counter-arguments as against the positions of Defendant Insurance Department are essentially the same as those against the City Defendants since the causes of action herein were concealed by virtue of a conspiracy of the defendants to prevent plaintiff from receiving the pension benefits to which she is entitled.

In addition, the attorney for Defendant Insurance Department, Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer, A.A.G., in the moving papers, argues that plaintiff's action is time barred by the four-months limitations period on the basis of the August 29, 1984, letter

from Mr. James B. Gardiner, Supervising Actuary of the Defendant Insurance Department, to United States Representative Stephen J. Solarz, in which he concluded that plaintiff's benefits had been calculated correctly and that all her questions had been answered; and on the basis of the January 31, 1985, letter from Ms. Mary A. Griffin, Executive Assistant to the Superintendent of Insurance Department, in which she responded to questions raised in plaintiff's December 12, 1984, letter to the Superintendent, Mr. James P. Corcoran. These two letters graphically illustrate the responses of the defendants in this action. The letter of August 29, 1984, makes no attempt to answer anything specifically. How did Mr. Gardiner conclude that plaintiff's benefits are correct? What did he review that showed that plaintiff's questions had been answered? (pp. 383-384) In his January 19, 1984, letter to plaintiff, the Executive Director of the Pension System stated that all of plaintiff's pension questions have not been answered (p. 414). Mr. Gardiner's letter is an example of the failure to respond to the specific claims involved herein. On June 7, 1985, Mr. Terence Lennon, Chief of the Life Insurance Bureau, also stated that all of plaintiff's questions have been answered and the computations corrected. What did Mr. Lennon review that showed this? When and where were corrections made? These two letters are examples of the fraudulent concealment of the pension facts. The January 31, 1985, letter of Ms. Griffin illustrates the false information disseminated by defendants. (pp. 392-393) Each of Ms. Griffin's answers is false and a concealment of

of the pension laws applicable to plaintiff. On January 31, 1985, the Insurance Department was still saying that plaintiff was not a member of a pension system for the period 1951-1953 (p. 392, second A.) Plaintiff sent proof of membership to all and to the Insurance Department on April 30, 1984 (p. 373). Plaintiff made handwritten notes on Ms. Griffin's letter to highlight the errors since the response regarding membership in a pension system in 1951-1953 indicated that no one was reviewing the matter. Ms. Griffin's response also indicated that the prior service automatic crediting as required by Law was being concealed again. Attorney Bohringer characterizes plaintiff's handwritten comments as "Refusing to accept the Department's answers * * *." Attorney Bohringer makes no comment as to the substance of Ms. Griffin's responses and no comment as to their accuracy or lack thereof (p. 325).

Further, Attorney Bohringer argues that the Supreme Court of the State of New York lacks subject matter jurisdiction to determine plaintiff's claims (pp. 326-327). Plaintiff argues that the Supreme Court has subject matter jurisdiction in this action. As to public agencies, claims against some, but not all public authorities must be brought in the Court of Claims. The question turns on the relationship between the body involved and the State. Easley v. N.Y.S. Thruway Authority, 1 N.Y.2d 374, 153 N.Y.S.2d 28 (1956). Further, subject matter jurisdiction often turns on the issues of fact. Troup v. McCart, 238 F.2d 289 (5th Cir. 1956). The issues of fact in the instant action are within the jurisdiction of the Supreme Court. Also, the

nine defendants herein are united in interest by virtue of their conspiracy in this action. The claims are numerous and complex. To separate the claims against the Insurance Department would be unjust, wasteful, and a gross disservice to justice, to the issues, and to the plaintiff. The significance of conspiracy in New York law is for joining all defendants and holding them responsible for the acts of each other. Conner v. Bryce, Sup., 170 N.Y.S. 94, 95-96 (1918). Generally, an allegation of fraud or collusion is sufficient for conspiracy.

The above arguments as to the positions of Attorney Bohringer are not intended as complete arguments of all the misstatements and concealments in her papers. Alterations of Exhibits attached to said papers are described above on pp. 10-11, herein.

C. As to Defendant Rosenberg

The Attorneys for Defendant Rosenberg, Bergadano, Zichello & Babchik, by Ann McIntyre, Esq., argue that plaintiff failed to state a cause of action against Defendant Rosenberg. On the contrary, Defendant Rosenberg breached his agreement with Defendant Union to provide plaintiff with the pension information she was seeking and to correct errors in her calculations (p. 467). Defendant Rosenberg did neither. He unilaterally withdrew his representation of plaintiff in an April 5, 1983, letter to plaintiff after seeing her only once on February 15, 1983. He concealed all pension information from plaintiff after examining her documentation which included the Report of Actuary (p. 346), the Retirement System's certification

of plaintiff's service as 34 years of New York City Service (p. 347), the February 7, 1983, version of plaintiff's pension (p. 348), and the last Statement of Accounts received by plaintiff to that date (p. 366). He did not give plaintiff a definitive statement regarding the statute of limitations. Thus, he concealed, from plaintiff, all pension information and her legal rights. He thereby joined the conspiracy to deprive plaintiff of her employment benefits, which he accomplished by concealing that plaintiff's pension and prior service had been fraudulently calculated. He breached his fiduciary duty to plaintiff by not revealing material information. He did not safeguard plaintiff as to equal protection of laws which is a Constitutional guaranty.

Plaintiff was forced to discover pension information and her legal rights over a long period of time due to the obstructive tactics of defendants. After Defendant Rosenberg disengaged himself on April 5, 1983, plaintiff could not retain an attorney even after consulting over 30 attorneys in her attempts to do so. The obstructive tactics were many and they continue to date and they constitute an abuse of plaintiff's time, person, and property, and a deprivation of plaintiff's civil and due process rights.

D. As to the City University Defendants (Board of Higher Education of the City of New York, City University of New York, and New York City Technical College)

The moving papers of the City University Defendants are riddled with errors, misstatements, and omissions. In

her affidavit in opposition to City University Defendants' motion for dismissal, plaintiff responds to and refutes and documents as many of the misstatements as possible within the constraints of such a paper. See pp. 540-542, ¶79(a) - (i) of the Record on Appeal. The arguments therein are repeated and re-attested as though fully set forth herein.

The attorney for the City University Defendants, Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer, A.A.G., shows no evidence that his office investigated plaintiff's claims of fraud; and, in addition, his office used altered evidence to support the argument that plaintiff's questions have been answered (p. 541, ¶f). Altered evidence was used by this attorney to support argument on the part of Defendant Insurance Department, which defendant is represented by the same attorney (pp. 9-11 above).

As to fraud, City University, on July 17, 1985, certified plaintiff's service at the College as having ended in 1977 instead of 1982 (5 years difference)(pp. 515-517). This communication from City University was the first time that plaintiff discovered that her pension was a 29-year pension and not a 34-year pension. Defendants' concealment prevented the discovery until July 17, 1985. Attorney Bohringer misstates the contents of this fraudulent communication and ignores the fraud. Attorney Bohringer misstates the effects of the Melani decree and that it bars plaintiff's actions which it clearly does not (p. 512, ¶IVC). The Personnel Office of plaintiff's College sent a letter to the Retirement System in 1968 in which plaintiff's date of promotion to assistant professor was stated

as five years later than it actually took place. The College apparently misinformed the Pension System about plaintiff's membership in a retirement system for the period 1951-1953, since the Retirement System shows no membership for that period (p. 551); plaintiff provided proof of membership (p. 374); Dean Bronstein of Defendant College provided an altered letter as to this; and the defendants and the Courts ignore this fraud. The College and the Retirement System are concealing all the causes of action in plaintiff's records by refusing to give her a copy of them. Clerks at the Retirement System have informed plaintiff that she has gaps in service which is untrue but they will not allow plaintiff to see the records which show this.

The College misstated plaintiff's service throughout the years which misstatements were not known by plaintiff. The College prevented plaintiff's purchase of one year of private school teaching and this was done discriminatorily and fraudulently. The College has obviously supplied the information to the Retirement System which fraudulently established plaintiff's service as 29 years instead of 34 years. This is shown clearly in City University's 29-year certification of service. The Attorney for City University Defendants ignores the fraud therein (p. 497, ¶8).

The above arguments as to the positions of the City University attorneys are not intended as complete arguments of all the misstatements made in their papers. The conspiracy, concealments, and fraud continue as are evidenced by the moving papers of said parties.

E. As to Defendant Professional Staff Congress/CUNY (Union)

In the moving papers, D. Nicholas Russo, Legal Director and Attorney for Defendant Union, argues that plaintiff's "suspicions regarding her pension allotment" are unfounded (p. 590) and that plaintiff "maintains in the instant action (that the Retirement System) miscalculated her pension" (p. 589). Attorney Russo ascribes the "unfounded" argument to plaintiff when the situation indicates the reverse. It is unbelievable that this Attorney, as all the other attorneys and the Courts herein, can make such statements without even a hint as to the correct amount of the pension, how it should have been calculated, the Pension Law which is the source of the formula, and any proof. The same applies to the crediting of prior service; not even a hint as to how it should have been charged and credited, the Pension Law which is the source of such crediting, and any proof.

Plaintiff does not maintain that her pension was miscalculated; plaintiff maintains that it was discriminatorily and fraudulently calculated. And, plaintiff documents this. The attorney for the Union goes on to say that Ms. Beryl Weinberg. the Union Pension Officer, provided plaintiff with the same consultation that she had provided to "other bargaining unit members" (p. 589). Ms. Weinberg used a form to give the appearance of so doing. However, in reality the form was inapplicable to plaintiff since it used the B20 percentages and it was obsolete. Ms. Weinberg did not follow the formula thereon for that reason. Further, it is interesting to note that this was the first version of her pension that plaintiff received and the

amount of the "normal pension" thereon was calculated as amounting to 73%, which is the percentage that the Retirement System awarded as its pension (p. 608). In a Union publication, the amount of the pension for City University faculty is stated as 2½% for each year of service, which is correct for members with service under 30 years. Using 2½% times plaintiff's 34 years does not equal the pension amount plaintiff was awarded. In addition, plaintiff's service was reduced to 29 years to avoid applying the 30-year retirement allowance. Ms. Weinberg did not use the correct pension formula for plaintiff and did not reveal the rules for the crediting of prior service. In addition, in her affidavit in support of the motion to dismiss, Ms. Weinberg states that she did not "discuss the 30-year rule with her, as I had likewise not discussed with her other irrelevancies" (p. 582, ¶10). Does Ms. Weinberg consider using 29 years instead of 34 years for the calculation an irrelevancy? Does she consider not using the 30-year retirement allowance in plaintiff's case an irrelevancy? Does she consider not informing plaintiff, who has 35 years of service with a year of private-school teaching, that there is a 35-year retirement allowance an irrelevancy? All of this was discriminatory and fraudulent on the part of the Union.

As to retaining legal counsel, Ms. Weinberg states in her affidavit that she "sent plaintiff to outside counsel NOT because I believed she had a meritorious claim but after it became obvious to me that plaintiff would never be satisfied with my answers or those provided by the pension system" (p. 581, ¶8).

The letter she sent to plaintiff informing her of the attorney retained by the Union disproves this (p. 611); Defendant Rosenberg's letter disengaging himself disproves this (p. 613). Ms. Weinberg informed plaintiff that she would retain an attorney to assist in these matters after viewing the Report of Actuary, the Pension System's Certification of plaintiff's service, and plaintiff's 1981 Statement of Accounts, among other papers.

The Union has been abusive to plaintiff. Her letters went unanswered; she was refused answers to questions; the Union dismantled its library to block plaintiff from gaining any pension information and instructed her to go to a law library for such information. All of these actions were committed discriminatorily and fraudulently and in conspiracy with the other defendants to deprive plaintiff of her pension benefits. The attorney for the Union, in his memorandum in support, does not deal with any of the pension facts and relies on a four-month statute to bar this action. The Defendant Union along with the other defendants discriminatorily and fraudulently deprived plaintiff of her benefits. They obstructed discovery of these actions. And then they all argue a short, inapplicable, un-Constitutional in this case, statute of limitations which does not apply to discrimination and fraud.

The above arguments as to the positions of the Union attorney and pension counselor are not intended as complete arguments of all the misstatements and wrongs in their papers.

POINT I

DID THE SUPREME COURT ABUSE ITS DISCRETION IN DISMISSING THE COMPLAINT

The Courts below granted defendants' motions to dismiss without passing upon the sufficiency of any of the causes of action in plaintiff's complaint. It did not find or hold that the complaint failed to state a cause of action. The Courts held that plaintiff's "law suits" or "causes of action" are barred by "the four-month statute of limitations." As to these decisions, the causes of action are not even mentioned and the reason for the applicability of the four-month statute is never stated.

The detailed presentation of the facts in this case above in this paper and in plaintiff's papers in response to the 5 motions for dismissal establishes sets of facts for employment discrimination, violations of civil rights, deprivation of Constitutional rights of due process and equal protection of law, conspiracy, concealment, fraud, breach of fiduciary and contractual duty, and gross negligence. The Courts below did not respond to these causes of action as did not the attorneys for the defendants. The plaintiff documented these issues of fact and the defendants did not show one shred of evidence in disputation. The Courts proceeded to dismiss without giving the complaint and the papers sufficient consideration, without responding to the causes with any specificity, and without delivering opinions and reasons. The Courts improperly dismissed all the issues of fact in this action

which facts were not in any manner disproved by the defendants.

The only statement made by the Courts as to a reason for dismissal is "the four-month statute." No Court below stated which act constituted accrual of the four months, among the many acts in the causes herein, and no Court below stated why the four-month statute barred all the causes herein.

POINT II

NONE OF PLAINTIFF'S CAUSES OF ACTION IS TIME BARRED

A. As to Employment Discrimination

Plaintiff was discriminated against on the basis of sex and religion in the deprivation of her employment benefits. The only persons to plaintiff's knowledge who received the 30-year retirement allowance and had prior service credited correctly are similary situated male and/or non-Christian teachers. The substance of the right to equal protection of laws is that all persons who are similarly situated be treated alike. Invidious discrimination violates the equal protection and due process clauses of both the Federal and State constitutions. See Phelan v. City of Buffalo, 54 A.D.2d 262, 388 N.Y.S.2d 469 (1976). Plaintiff was discriminated against in the groups of teachers in which she was similarly situated as to length of service and prior service credit. The discrimination resulted in a fraudulently reduced annual pension, the improper charge for prior service, and the omission of such charged service in the pension allotment.

Employment discrimination is not subject to a four-month time limitation. The Courts have consistently applied

the three-year limitations period for liability created or imposed by statute, CPLR §214(2) to claims for deprivation of civil rights. See Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981). Further, in Pauk, the Court held that the claim accrues when the plaintiff knows or has reason to know of the injury that is the basis of his action. Thus, in the instant case, plaintiff's claims of discrimination, civil rights violations, and conspiracy are not time barred according to CPLR §214.

Although the Courts below made no reference to a date of accrual from which untimeliness was decided, the defendants, in their papers, determined untimeliness from a failure to counsel date some time in 1982 and from a failure to credit as to prior service some time in 1981. These were discriminatory acts definitely. However, they were not isolated and singular acts as the defendants contend. The discrimination certainly continued in the calculation of the pension and in the discriminatory acts of defendants in which they held that everything was correct. Also, as to the 1981 and 1982 acts, the discrimination was not known to plaintiff since it was fraudulently concealed.

As to discrimination and continuing wrongs, CPLR §297, Exec. Law Art. 15: Human Rights Law, Note 5, sets forth that a complaint made upon violation of the article must be filed with the Division of Human Rights within one year of alleged unlawful discriminatory practice; however, where unlawful discriminatory practice is of a continuing nature, date of occurrence is deemed

to be any date subsequent to its inception up to date of its cessation. In determining whether a discriminatory practice is of a continuing nature, the essential factor is whether the discriminatory practice has continuing impact on the plaintiff. Plaintiff's diminished pension and its continuing impact is thus a continuing wrong. In Mendoza v. State Division of Human Rights, 74 A.D.2d 508, 424 N.Y.S.2d 447 (1980), it was not required that the complaint be filed within one year of the salary increase that was the discriminatory act complained of. The continued payment of the lower salary made the discriminatory act a continuing one. In the instant case, plaintiff's diminished pension is a parallel continuing discriminatory act.

Section 218 of the CPLR provides: "* * * the right to commence the action may be revived by an acknowledgment or payment." This provision has the effect of making a pension payment a continuing wrong and continually revived. By way of additional note, the State Division of Human Rights prevented and barred plaintiff's filing a claim with that Division. The EEOC deferred the claims to the State Division which to date has made no investigation, has not contacted all the respondents, has not allowed plaintiff to speak with an investigator, and has not held a hearing.

B. As to Article 78 and Four-Month Time Limitation

The Article 78 proceeding is inappropriate for plaintiff's causes of action for discrimination, civil rights and Constitutional violations, fraud, concealment and breach. The Article 78 is a procedural device for obtaining relief previously sought by writs of certiorari for review, mandamus, or

prohibition. Such writs are not appropriate for the causes of action herein. In addition, even if an Article 78 proceeding is available, there is no basis for believing that New York courts regard this proceeding as the exclusive means for pursuing such claims, which the Court so held in Pauk, supra.

Further, as to the Article 78, "restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner * * *" CPLR §7806. Chase, Civil Litigation in New York, p. 849 (1983). In plaintiff's action, restitution for the first cause of action is upwards of $30,000. Also, in Chase, the context in which he discusses the Article 78 is one in which he sets forth the advantages of opting for litigation or for an Article 78, at the choice of the attorney.

As to Article 78, it is difficult to obtain disclosure and in plaintiff's case disclosure is vital to success on the merits. The pension plan has not been disclosed by defendants. Plaintiff's records have not been produced.

Finally as to the Article 78, the language therein states: "The only questions that may be raised in a proceeding under this article are * * *" The article does not require that the questions be raised in an Article 78 proceeding.

In the instant case, since the Courts below did not give reasons, it is difficult to know why the Courts held that plaintiff's causes of action are barred by the four-month limitation. There is no indication in the Court Orders of the action to which the limitation is applicable and no indication of the reasons for its applicability to the causes herein.

C. Fraud and the Statute of Limitations

Where the cause of action is conceived in fraud, it is a continuing wrong not barred by any statute. Greenberg v. Schwartz, 73 N.Y.S.2d 458 (1947). In Greenberg, the Court held that defendant's claim that the statute of limitations had run before the suit was commenced is without merit since the kind of wrong complained of (one conceived in fraud) is a continuing wrong and not barred by any statute. Further, a court may estop a defendant whose misconduct makes it unfair for him to hide behind the statute of limitations as in the situation where defendant conceals the cause of action from plaintiff. CPLR §201:6 Application of Art. 2: Estoppel to Assert Statute of Limitations. In the Chiappa "rule," the Court of Appeals held that the theory in the case of concealment of theft is that a defendant should not be permitted to take refuge behind the shield of his own wrong. General Stencils, Inc. v. Chiappa, 18 N.Y.2d 125, 272 N.Y.S.2d 337, 219 N.E.2d 169 (1966). In Simcuski, the Court held that equitable estoppel is applicable to relieve plaintiff from the proscriptions of the statute where defendant intentionally concealed alleged malpractice from plaintiff and falsely assured her of effective treatment. Simcuski v. Saeli, 44 N.Y.2d 442, 406 N.Y.S.2d 259, 377 N.E.2d 713 (1978). The estoppel question arises also where the defendant is a fiduciary and thus has a duty to speak. See Erbe v. Lincoln Rochester Trust Co., 13 A.D.2d 211, 214 N.Y.S.2d 849, app. dsmd. 11 N.Y.2d 754 (1961).

In the instant case, defendants concealed all the causes of action, did not respond, would not produce records, continued assertions that everything was correct, and elongated the time

as to all proceedings herein. The actions of the Courts below in allowing the defendants to hide their wrongs using the statute of limitations as a shield is contrary to all Court decisions on this, is unjust, and is unconscionable.

Finally, as to the statute of limitations, all of plaintiff's causes are not time barred. The six-year statute of limitations for fraud has not expired as to the 1981 and 1982 acts on which defendants rely. Those acts were fraudulently conceived and are thus subject to the six-year statute; and this is so even without taking into consideration that plaintiff's discovery of the fraud occurred long after retirement which would result in equitable tolling of the statute had there been such need.

CONCLUSIONS

The complaint details causes of action in four major areas. Due to the number of claims, it is impossible to include arguments as to all within the limits of this paper. Thus, as to the unargued items, plaintiff rests on the complaint and papers in opposition to the motions herein.

No one seems to be concerned that an aggrieved cannot retain an attorney which situation, in effect, deprives the aggrieved of due process and trial by jury which are inviolate Constitutional rights. To date, there has been no hearing of plaintiff's claims by any administrative or governmental agency or by any court.

Tactics are used against a pro se party to prevent that party from remedying the wrongs. Even procedural information is withheld. Papers are not filed. Records are flood damaged. Altered evidence is used. The defendants and the Court do not respond to the causes of action.

WHEREFORE, for all of the reasons set forth herein and in greater detail in the complaint and opposing papers, this Court should reverse the three Orders of the Supreme Court of the State of New York, Kings County, dismissing the complaint and order a trial by jury of the facts in dispute herein as Constitutionally protected.

Dated, September 5, 1986.

Respectfully submitted,

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BRIEF OF STATE DEFENDANTS-RESPONDENTS
(PP. 741-765)

To Be Argued By
ANNE EHRENKRANZ
(5 Minutes Requested)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

- against -

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

DEFENDANTS-RESPONDENTS' BRIEF

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

- against -

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

DEFENDANTS-RESPONDENTS' BRIEF

Preliminary Statement

Alice Clissuras, appellant and plaintiff below, retired September 1, 1982, from her teaching position at New York City Technical College ("the College"), a respondent and defendant below (R. 72, ¶ 13).[1] In 1985, she commenced a pro se action in Special Term to challenge the amount of her retirement

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1 References preceded by "R." refer to the record filed by the plaintiff in this appeal.

benefits (R. 307, ¶ 9; R. 497, ¶ 9) In the complaint, she alleged that she had been discriminated against because of her sex and religion by the College, the Board of Higher Education of the City of New York, the City University of New York;[2] various City agencies,[3] the Department of Insurance of the State of New York (the "Insurance Department"), her union, and an outside attorney retained by her union (R. 73-74, ¶¶ 18-19).

In this Court, plaintiff appeals from the orders dismissing her complaint (R. 4-6, 13-18, 22-24).

Special Term dismissed the complaint against the Insurance Department (Shaw, J.) and the City University (Hurowitz, J.) on this ground.

Questions Presented

1. Whether plaintiff's claims against the City University and the Insurance Department are barred by the four-month limitations period applicable to Article 78 proceedings?

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2 The Board of Higher Education of the City of New York, the City University of New York, and the College will be referred to collectively as the "City University."

3 The City of New York, the Retirement Board and the Retirement System will be referred to collectively as the "City defendants."

2. Whether plaintiff has a private right of action against the Insurance Department?

Special Term did not consider this question although it was raised below.

3. Whether the Supreme Court of the State of New York lacks subject matter jurisdiction to determine plaintiff's claim for damages against the Insurance Department?

Special Term did not consider this question although it was raised below.

A. Plaintiff's Complaint

In late 1985, plaintiff commenced an action against defendants in the Supreme Court of the State of New York, Kings County. The defendants are the City of New York, the Teachers' Retirement Board of the City of New York (the "Retirement Board"), the Teachers' Retirement System of the City of New York (the "Retirement System"), the City University, the Professional Staff Congress/CUNY (the "Union"), the Insurance Department, and Lewis Rosenberg ("Rosenberg"), an attorney retained by the Union to represent plaintiff (R. 69-71, ¶¶ 2-7; R. 94, ¶ 44 (B)). The complaint seeks an accounting, compensatory damages in the

amount of $500,000 and punitive damages in the amount of $2,000,000 (R. 101).[4]

Plaintiff alleges that she was a faculty member of the College from September 1, 1948, until her retirement on September 1, 1982 (R. 72, ¶ 13). From 1948-1953, she was a member of New York State Public Pension Systems, and from 1953-1968, she was a member of the New York City Employees' Retirement System (R. 78, ¶ 24). On September 1, 1968, she transferred membership to defendant Retirement System (R. 77, ¶ 23).

In the complaint, plaintiff alleges that she began to receive pension checks from defendant Retirement System on January 2, 1983 (R. 72-73, ¶¶ 14-15). She says that the checks did not reflect the benefit for thirty years of service to which

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4 Simultaneously with commencing the present action, plaintiff filed a virtually identical complaint Clissuras v. City of New York, CV 85-318C (E.D.N.Y. December 12, 1985) (judgment and order) (Weinstein, C. J.) (R. 165-97). The District Court dismissed that complaint as to all defendants on the grounds that plaintiff's claims were barred by the statute of limitations and that no constitutional violation existed. The court, in its discretion declined to exercise pendant jurisdiction over plaintiff's state law claims. The Second Circuit Court of Appeals affirmed the decision of the district court on March 31, 1986 Clissuras v. City of New York et al., No. 85-9002. Plaintiff moved for a rehearing en banc, which the circuit denied on June 4, 1986. Then, plaintiff filed an appeal and petition for a writ of certiorari which the Office of the Clerk returned to her because there was no provision in the Rules for such a procedure. Plaintiff has sent another appeal/petition to the United States Supreme court whose status is not yet resolved.

she was entitled (R. 73, ¶ 16) and that, before retiring, she was not informed about either a thirty-year benefit or a possible thirty-five year benefit (R. 74, ¶ 19).

In addition, plaintiff alleges that the computation of her pension, which was not originally explained to her (R. 73, ¶ 15), was in error in several respects (R. 77-83, ¶¶ 23-33). For example, she says that the Retirement System has negligently maintained that she was not a member of any retirement system for the years 1951-1953, that she needlessly paid $2501.54 for those years, and that the $2501.54 has never been credited to her annuity (R. 79, ¶ 28). Plaintiff also alleges that her pension has not been calculated on the basis of her entire 34 years of teaching (R. 80, ¶ 31).

On these alleged facts, plaintiff asserts three claims against the Insurance Department. First, she claims that the Department had a fiduciary responsibility to inform her about pension options before her retirement and failed to so so. (R. 73-74, ¶ 18). Because, according to the complaint, "male and/or non-Christian teachers" were so informed (R. 74, ¶ 19) by someone not identified, plaintiff concludes that the Department

discriminated against her (R. 73-74, ¶¶ 18-19).[5] Second, she claims that, after her retirement, when she sought help from the Insurance Department, it was negligent in not crediting her with three years of membership in the New York State Employees' Retirement System on the basis of alleged proof she tendered in a letter (R. 80-81 ¶ 32(A)). Third, plaintiff claims that the Insurance Department wrongly denied her a "hearing before rendering its decision that all [computational] errors had been corrected and appropriate adjustments made in . . . [her] benefits . . ." (R. 93, ¶ 43(E)).

Plaintiff asserts four claims against the City University. First, she claims that the City University wrongly denied her counseling and help before her retirement (R. 73-77, ¶¶ 18-20). Second, she claims that the College negligently reported incorrect information to the Retirement System (R. 80-81, ¶ 32(A)-(B)). Third, she claims that, by failing to

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5 Plaintiff argues that Melani v. Board of Higher Education, 561 F. Supp. 768 (S.D.N.Y. 1983), establishes that she was a victim of sex discrimination by the City University. However, that case merely discussed whether the City University discriminated against women in the payment of salaries. Melani, 561 F. Supp. at 772. The court specifically stated that it made no findings as to any alleged discriminatory practices in such matters as hiring, promotion or fringe benefits. Id. The final consent decree (the decree at R. 511-14 is merely the proposed decree) also explicitly did not resolve whether City University may have discriminated in the payment of pension benefits. (A copy of the final order in Melani is attached hereto as Exhibit A). Thus, the Melani litigation is entirely irrelevant to the case at hand.

advise her, the College is responsible for her having made unwise choices throughout her employment. For example, plaintiff claims that "misinformation" from the College caused her to withdraw funds from State Systems (R. 81, ¶ 32(C); R. 98, ¶ 46(A)). Fourth, she claims miscellaneous acts of wrongdoing during her employment; e.g., in 1978, the College discriminatorily docked 20 days from her sick leave (R. 98-99, ¶ 46(b)), and, in 1981, the College incorrectly informed her that a course had been cancelled (R. 99, ¶ 46(C)).

B. Proceedings in Special Term

All defendants moved to dismiss the complaint (R. 148, 301, 439, 491, 571). All motions were successful (R. 9, 19, 29). The City defendants, the Insurance Department and the City University argued, inter alia, that the four-months limitations period applicable to Article 78 proceedings applied and that it had expired (R. 157-59, 328-31, 525-29). Special Term (Shaw, J.) dismissed the complaint as to the City defendants and the Insurance Department on this ground (R. 12). Special Term (Hurowitz, J.) found that the decision of Justice Shaw dismissing the complaint as to the City defendants and the Insurance Department (R. 12) represented the law of the case and dismissed the complaint as to the City University and the Union on that

ground (R. 63-64).[6] Special Term (Bernstein, J.) dismissed the complaint as to Rosenberg on the ground that the complaint failed to state a cause of action against him (R. 19-21).

ARGUMENT

POINT I

SPECIAL TERM CORRECTLY RULED THAT PLAINTIFF'S CLAIMS AGAINST THE INSURANCE DEPARTMENT AND THE CITY UNIVERSITY ARE BARRED BY THE FOUR-MONTH STATUTE OF LIMITATIONS APPLICABLE TO ARTICLE 78 PROCEEDINGS.

CPLR § 217 provides, in part:

> Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination

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6 Relying upon the decision of Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York dismissing plaintiff's federal complaint, Justice Hurowitz also found that plaintiff raised no claim of constitutional significance (R. 62).

> to be reviewed becomes final upon the petitioner. . . .[7]

Plaintiff commenced this action against the Insurance Department on August 27, 1985 (R. 307, ¶ 9). She commenced it against the City University on October 30, 1985 (R. 497, ¶ 9). With respect to the Insurance Department, plaintiff knew at the very latest in February 1985, that the Department had reviewed her file and had concluded that all errors had been corrected and that the procedures used by the Retirement System were "in conformity with applicable statutes" (R. 305-06, ¶¶ 6-7). It was at this point, at the latest, that plaintiff knew that the Insurance Department was not going to take her side in this dispute (R. 305, ¶ 6; R. 316-17). With respect to the City University, plaintiff knew in February 1983, or shortly thereafter, that the University disagreed with her position regarding the calculation of her pension benefits (R. 495, ¶ 5; R.

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7 "The 'determination' which CPLR 217 speaks of, and whose moment of finality starts the four months, applies not only to what is strictly speaking 'certiorari,' where the determination follows a quasi-judicial hearing mandated by law, but also to 'mandamus to review,' where an administrative determination involves discretion but does not require a plenary hearing. The involvement of discretion, therefore, is one strong indicator that the 'final determination' moment starts the four months." D. Siegel, New York Practice § 566, at 792 (1978) (footnote omitted). See also J. McLaughlin, Practice Commentaries, C 217:1 at p. 508 (McKinney 1972); see generally 8 J. Weinstein, H. Korn & A. Miller, New York Civil Practice, ¶ 7804.02 (1983).

501-02). Further, in January 1984, she knew that the College had given her all payroll information it could give her and that, in the College's view, it had credited her with the maximum sick leave allowable (R. 496, ¶ 7; R. 509-10).

Because plaintiff seeks the review of administrative determinations necessarily made before she received her first pension check in 1983 (R. 72-73, ¶¶ 14-15), it follows that this action is barred by the four-months limitations period. See Shields v. Hofstra University, 77 A.D.2d 867 (2d Dep't 1980); In re Greenbaum, 48 A.D.2d 969 (3d Dep't 1975). Cf. In re De Milio, 55 N.Y.2d 216 (1982) (where a probationary employee's employment is terminated and he has no right to a hearing, the four-month period begins to run from the date of his dismissal, not from the date of the refusal of his request for reconsideration).

In Greenbaum, petitioners contested their failure of the examination required for licensing as Nursing Home Administrators. Holding that the four-month period commenced when they received notice of their failure, the court rejected their argument that their petition was in the nature of a mandamus to compel:

> The petition explicitly attacks the procedures employed in developing and grading the examinations. It quite obviously seeks review of respondents' various determinations in administering those tests, yet raises no genuine question of any failure on respondents' part to perform any duty enjoined upon them by law. As a result,

> petitioners' contention that the instant proceeding is in the nature of mandamus to compel certain action, for which the appropriate time limit would commence running upon their demand and refusal of access to the examination questions and answers, is without merit.

48 A.D.2d at 969-70 (citations omitted).

In Shields v. Hofstra, plaintiff was a law student who brought a contract action challenging her academic dismissal from defendant law school. Hofstra argued that the action was properly an Article 78 proceeding and that it was time-barred. The court held that the complaint failed to state a cause of action but also agreed with Hofstra that, had the action been filed as an Article 78 proceeding, it would have been untimely:

> Assuming, without deciding, that plaintiff's claims of arbitrary and capricious conduct by defendants, although not arising out of contract, are cognizable in a proceeding pursuant to CPLR article 78, we agree with defendants that, if this action were to be converted to such a proceeding (see CPLR 103, subd [C]), the proceeding would be time barred since it was commenced more than four months after plaintiff received final notice of the law school determinations that she was academically ineligible to continue her studies and that her application for a second extension of her conditional advancement had been denied. Plaintiff's request for a reconsideration of these determinations . . . did not operate to extend the limitations period.

77 A.D.2d at 869 (emphasis added).

Thus, aside from plaintiff's lack of standing to sue the Insurance Department, which has not even allegedly deprived her of any benefits or made any erroneous calculations which

affect her benefits, her action is untimely.[8] Even if one assumes that plaintiff has a recognizable cause of action against the Insurance Department, her letters to the Department after her receipt of the Department's January 31, 1985 letter (R. 318-20, 406-07) are only contentious requests for reconsideration, which, under Greenbaum and Shields, do not extend the limitations period. Similarly, even if one assumes that plaintiff had cognizable claims against the City University, for allegedly reporting incorrect information to the Retirement System, those claims could be litigated only in an Article 78 proceeding which would have been untimely if commenced at the time she commenced this action. Her persistence in arguing the correctness of her calculations (R. 501-02, 503-04, 509-10) does not, under Greenbaum and Shields, extend the limitations period.

Plaintiff's arguments that the four-month statute of limitations does not apply are unavailing (Plaintiff-appellant's Brief at 45-48). It is clear from plaintiff's argument that she

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8 The Insurance Law specifically provides that "[n]otwithstanding the specific enumerations of the right to judicial review in this chapter, any order, regulation or decision of the superintendent is declared to be subject to judicial review in a proceeding under Article Seventy-Eight of the civil practice law and rules." N.Y. Ins. L. § 326 (McKinney 1985). Thus, any claim plaintiff might have had with respect to the Department's review of her file and its refusal to grant her a formal hearing could be maintained only in an Article 78 proceeding.

disagrees with the legislature's wisdom in prescribing a relatively short limitations period for review of administrative determinations and that she further disagrees with its wisdom in prescribing a form of proceeding for such a review which does not ordinarily involve full discovery (id. at 45-46). Essentially, plaintiff attempts to escape the statutory prescriptions by arguing that she has raised claims for constitutional violations and for fraud, which are not governed by the four-months limitations period.[9] But as to her argument that she has been the victim of constitutional violations, Justice Hurowitz specifically found, as did Judge Weinstein, that her complaint did not allege the infringement of any constitutional right (R. 62). As to her argument that she has been the victim of a fraudulent scheme on the part of defendants to withhold retirement benefits from her, plaintiff does not plead fraud with the specificity required by CPLR § 3016(b). Since there was no concealment of a theft by defendants, the cases cited by plaintiff at p. 47 of her memorandum for the proposition that the statute of limitations has been tolled are inapposite. Special

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9 Plaintiff also argues that she has been discriminated against and that her discrimination claims are not governed by the four-months limitations period (Brief at 45-46). Plaintiff's claims that defendants have discriminated against her because of her sex and religion are purely conclusory (R. 73-74, ¶¶ 18-19). In any event, as shown in Point IV, infra, her claim for sex discrimination is barred.

Term properly dismissed the complaint on the ground that the statute of limitations had expired.

POINT II

PLAINTIFF HAS NO PRIVATE RIGHT OF ACTION FOR AN ACCOUNTING AGAINST THE INSURANCE DEPARTMENT.

The Insurance Department has general supervisory powers over New York Retirement Systems. N.Y. Ins. L. §§ 4601 et seq. (McKinney Pamphlet 1984). Among other things, the Department reviews applications of retirement systems to determine whether the proposed "rates of contribution are adequate and . . . [whether] the plan of operation is sound and equitable" and, if so, it issues licenses "authorizing the retirement system to do the business described in the plan." Id. at § 4602(b).

Nowhere in the Insurance Law is there a provision allowing an individual member of a retirement system to demand an investigation of her file or to demand a hearing. Contrary to plaintiff's mistaken notion (R. 93, ¶ 43(E)), the Insurance Law does not establish or authorize a claims procedure within the Insurance Department. The Law simply creates no duty on the part of the Insurance Department to guarantee that the account of an individual member of a retirement system is properly maintained. Hence, an individual retiree cannot demand either an accounting or a hearing from the Insurance Department.

POINT III

THE SUPREME COURT LACKS SUBJECT MATTER JURISDICTION TO DETERMINE PLAINTIFF'S CLAIMS AGAINST THE INSURANCE DEPARTMENT.

As noted above, plaintiff seeks both compensatory and punitive damages from all defendants. Because the Insurance Department is an agency of the State of New York, see N.Y. Ins. L. § 201 (McKinney 1985), any action for damages against it can be maintained only in the Court of Claims. See N.Y. Court of Claims Act § 9. The Supreme Court does not have subject matter jurisdiction to determine such claims. E.g., Psaty v. Duryea, 306 N.Y. 413, 417 (1954); Hongisto v. Mercure, 72 A.D.2d 850 (3d Dep't 1979).

Plaintiff's attempts to bestow subject matter jurisdiction upon the Supreme Court (Plaintiff's Brief at 34) are unavailing. She cites no authority -- factual or legal -- to support the propositions that the Insurance Department is not a State agency and that it may be sued for damages in the Supreme Court. Her argument that it would be inconvenient for her to sue the Department in the Court of Claims while pursuing this action against the other defendants (Plaintiff's Brief at 34-35) misses the point entirely: plaintiff's convenience is not the test for subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, this Court should affirm the orders of Special Term dismissing plaintiff's complaint.

Dated: New York, New York
December 16, 1986

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
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Education of the City of New
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Assistant Attorney General
of Counsel

DEFENDANTS-RESPONDENTS' (STATE DEFENDANTS)

EXHIBIT A: ORDER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT

MELANIE, ET AL. v. BOARD OF HIGHER EDUCATION

PP. 762-765

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

MELANI, ET AL.,

Plaintiffs,

-against-

THE BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

Defendant.

- -x

73 Civ. 5434

ORDER

GAGLIARDI, D.J.

By Order dated May 15, 1984, this court preliminarily approved a settlement decree in this action against the Board of Higher Education of the City of New York ("CUNY")[1] alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. ("Title VII"), and 42 U.S.C. §1983. Pursuant to that order, more than 23,000 current and former female members of the CUNY instructional staff were mailed copies of the proposed consent decree, along with a notice of the opportunity to file written objections to that decree and to appear at a hearing at which the court would consider those objections. On July 12, 1984, pursuant to the aforementioned notice, the court conducted a hearing with regard to the proposed decree.

The court has devoted extensive study to the proposed decree; the affidavits filed by counsel for both sides with

18. In addition to the monies disbursed under the settlement, the decree addresses the specific allegations of the complaint, as follows:

a) As to Claims 1, 2 and 13, relating to hiring practices, the decree provides for the affirmative action procedures, goals, and the review processes which afford access to the Special Master and court.

b) Claim 3, which addresses women's salary, has been expressly provided for through the procedures established in the decree for hearing and determination of salary claims.

c) Claim 4, the promotion claim, is provided for both with review processes and through the availability of the hearing procedure.

d) Claim 5, which deals with reappointment, is specifically dealt with in the procedure for hearing. Indeed, because of the compelling nature of the tenure and non-reappointment claims, they are to receive priority in scheduling under the decree's procedure.

e) Claims 6 and 7 have been rendered moot by the change in defendant's policy with respect to maternity leave and the use of leave time for pregnancy-related absences.

f) Claim 8, which relates to released time, is dealt with in the decree's §2.

g) Claim 9 was resolved by the university's agreeing to encourage participation by full-time members of the instructional staff in faculty elections, governance bodies and committees and by agreeing to provide at each college a statement describing voting rights as well as descriptions of procedures for amending governance plans. The University Affirmative Action Committee ("UAAC"), established by the decree, is to receive copies of the proposed amendments.

h) Claim 10, which relates to benefit plans, has in part become moot and has in part become the subject of other litigation. The parties have agreed that plaintiffs have not waived any claims respecting pension plans applicable to the CUNY instructional staff that they may have.

i) Claims 11 and 12, which relate to retaliation for complaining of discrimination, are dealt with within the express provision in the decree that there shall be no retaliation for participation in this lawsuit. Such claims are also dealt with in §II of the decree.

19. Provision has been made in the decree to acknowledge the contribution of time, effort, and expenses of the named plaintiffs in representing the class, by awarding them "symbolic payments." In the court's view, this provision is reasonable as to each of the named plaintiffs.

20. The remaining provisions of the decree are self-explanatory and require no substantial discussion. Counsel

(d) Moreover, plaintiffs have adequately represented the interests of all members of the class. Counsel for the plaintiffs, both before and after the decision on the salary issue, refused settlement offers that they believed to be inadequate.

(e) That approximately 25 class members, less than 1/10 of 1% of the class, have filed objections to the settlement is a significant indication of the decree's adequacy. Indeed, given the size of the class and education level of the class members, their overwhelming support of the settlement strongly supports its approval.

CONCLUSION

34. In view of the foregoing, and after considering all the factors set forth by the Second Circuit in Grinnell, and based upon the record, the court finds that the settlement of this class action upon the terms embodied in the proposed consent decree, as modified above, is fair, reasonable, and adequate and in the best interests of the members of the class in ths action and said settlement is hereby approved. Submit decree.

So Ordered.

U.S.D.J.

Dated: White Plains, New York
July 20, 1984.

BRIEF OF UNION ATTORNEY
DEFENDANT-RESPONDENT
(PP.766-779)

To be argued by
ANN TERESA MCINTYRE
(TIME FOR ARGUMENT: 10 MINUTES)

New York Supreme Court

Appellate Division—Second Department

ALICE CLISSURAS,

Plaintiff-Appellant,

against

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR DEFENDANT-RESPONDENT LEWIS ROSENBERG

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT
- x
ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK and LEWIS ROSENBERG,

Defendants-Respondents.
- x

Preliminary Statement

This brief is submitted on behalf of the defendant-respondent Lewis Rosenberg, in response to the appeal by the plaintiff-appellant Alice Clissuras from the order of the Hon. Aaron D. Bernstein of the Supreme Court, Kings County, dated December 24, 1985, which granted the motion by defendant-respondent Rosenberg for an order pursuant to CPLR 3211(a)(7) dismissing the plaintiff-appellant's complaint against him. R.19[1]

[1] "R" references are to pages in the Rocord on Appeal.

Statement of Facts

Appellant's complaint (R.69-101) contains four causes of action. The claim against Rosenberg is mentioned in the Fourth Cause of Action.

Appellant alleges that she was employed by the respondent New York City Technical College from September 1, 1948 to September 1, 1982, the effective date of her retirement. (R.72) Appellant further alleges that her first pension check was dated December 31, 1982, and was received in the mail on or about January 2, 1983. (R.72) The amount of her pension was approved by the respondent Teachers' Retirement Board of the City of New York on January 20, 1983. (R. 72) Appellant claims that the amount of her pension checks was lower than she should have received from her 34 years of service. (R.73)

Appellant alleges that she was never informed of a 30 year benefit, which was concealed by all respondents, and that the calculation of her pension is incorrect. (First Cause of Action, R. 72-77) Appellant further alleges that the respondent Teachers' Retirement System of the City of New York failed to grant credit for some three years of prior service, and concealed information as to prior service credit. (Second Cause of Action R. 77-83) Appellant further alleges that the respondent Retirement System has refused to provide certain

records to appellant and has been negligent in the keeping of appellant's financial records. (Third Cause of Action, R. 83-87)

Appellant also alleges that she has been deprived of certain other rights by each of the above named respondents, (Fourth Cause of Action, R. 87-101), and alleges that respondent Lewis Rosenberg was retained by the respondent Professional Staff Congress/CUNY ("the Union"), to represent her in a legal action against the Retirement System to gain needed information and to correct any errors (R.95); that she met with respondent Rosenberg on February 15, 1983 (R.95); on March 25, 1983 she spoke with a Mr. Rothman, an associate of respondent Rosenberg, who discussed a possibly applicable four-month limitations period with her, among other things (R.95-96); and that on April 5, 1983, she was informed by letter that respondent Rosenberg would not continue as her attorney and in that letter respondent Rosenberg again expressed concern about a short limitations period. (R.96)

Respondent Rosenberg moved to dismiss the complaint for failure to state a claim upon which relief can be granted.

In a decision dated December 20, 1985, the Hon. Aaron D. Bernstein dismissed the complaint against respondent Rosenberg for failure to state a cause of action, stating, among other things, as follows:

> "It is obvious from the very detailed motion papers submitted by the plaintiff that all of her claims occurred prior to the meeting with the defendant Rosenberg and that she has suffered no damages by virtue of any malpractice or negligence on the part of the defendant Rosenberg." (R.20)

The other respondents also successfully moved to have the complaint against them dismissed. A judgment by the Hon. James H. Shaw, Jr. dated December 18, 1985 dismissed the complaint as against respondents City of New York, Teachers' Retirement System of the City of New York and the Department of Insurance of the State of New York as barred by the statute of limitations. (R.9-11)

By order of the Hon. Barry Hurowitz, dated February 14, 1986, the complaint was dismissed against respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College and Professional Staff Congress/CUNY (R.29-30) on the ground that the action was barred by the four-month statute of limitations (R.63)

As to the other respondents (all others except Rosenberg) the complaint against them is a claim for an accounting and for damages, essentially a special proceeding seeking a determination that decisions concerning appellant's pension were made in violation of a lawful procedure or affected by an error of law, or was arbitrary and capricious or an abuse of discretion (CPLR §7803(3)). In essence, plaintiff seeks

review of a decision concerning the amount of her pension made over three years ago. The claims against the other respondents would, therefore, necessarily be in the form of an Article 78 proceeding, barred by the four-month statute of limitations.

Respondent Rosenberg's motion, however, was based on failure to state a cause of action against him.

Appellant lists two full pages of issues and "sub"-issues in her brief. However, as to defendant Rosenberg, the issue is solely whether the respondent's complaint successfully states a cause of action. Justice Bernstein properly concluded that it did not.

Question Presented

Does the complaint state a cause of action against respondent Lewis Rosenberg?

Justice Bernstein correctly held that the complaint fails to state a cause of action against respondent Lewis Rosenberg.

Point

THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST RESPONDENT LEWIS ROSENBERG

Appellant's claims are that she has been damaged as a result of inaccurate calculation of her pension benefits (First Cause of Action, R.72-77), that she has been denied credit for prior service (Second Cause of Action, R.77-83), that the Teachers' Retirement System has refused to provide her with financial records (Third Cause of Action, R.83-87), and that she has been deprived of other rights (Fourth Cause of Action, R.87-101).

The claim for deprivation of other rights contains allegations against the other respondents and respondent Rosenberg (R.95-97).

Appellant alleges that respondent Rosenberg deprived her of certain rights, alleging that the respondent Union retained the Shapiro, Shiff, Belily, Rosenberg & Fox firm to represent her, that she met with respondent Rosenberg on February 15, 1983 and that on April 5, 1983 respondent Rosenberg sent a letter informing her that he would not continue as her attorney, and informing her that a short statute of limitations may be applicable. (R.96-97)

Appellant makes the following claim against respondent Rosenberg in subparagraph (G) of paragraph FORTY-FIFTH of her complaint:

> "By reason of all of the aforesaid, defendant Lewis Rosenberg was negligent in the conduct of plaintiff's case in that he took no steps and had no file in furtherance of plaintiff's case. He did not discuss plaintiff's case and legal rights with her. He withheld information from plaintiff as to her pension benefits and legal rights. He terminated representation of plaintiff with no direction." (R.97)

Even taking all of appellant's claims against respondent Rosenberg as true, the complaint fails to state a claim for legal malpractice against respondent Rosenberg, and must be dismissed.

In order to state a claim for attorney malpractice appellant must establish that the alleged loss was proximately caused by the attorney's negligence. As was stated by the court in Newman v. Silver, 553 F.Supp. 485 (S.D.N.Y. 1982):

> "A claim for malpractice, however, also requires a showing that the client's injury was caused by the attorney's malpractice or negligence ... This requires a showing that the result would have been altered in the underlying action had his attorney not been negligent."

553 F. Supp. at 495.

In other words:

> "Before a plaintiff can succeed in an action for legal malpractice, he must be able to demonstrate that if not for the alleged acts

> of malpractice, he would have been able to recover or proceed in a manner other than that which actually eventuated."

Becker v. Julien, Blitz & Schlesinger, P.C., 95 Misc.2d 64, 406 N.Y.S.2d 412, 414 (Sup. Ct. N.Y. Co. 1977), modified on other grounds, 66 A.D.2d 674, 411 N.Y.S.2d 17 (1st Dept. 1978). See, Freschi v. Grand Coal Venture, 564 F.Supp. 414 (S.D.N.Y. 1983); Spector v. Mermelstein, 361 F.Supp. 30 (S.D.N.Y. 1972), modified on other grounds, 485 F.2d 474 (2d Cir. 1973).

Any injuries appellant may have suffered were sustained before appellant ever met respondent Rosenberg. Appellant retired on September 1, 1982 (R.72); she began to receive pension checks on January 2, 1983 (R.72); she claims that before her retirement she was not informed about a thirty year or thirty-five year bonus or benefit and that respondents discriminated against her for failing to provide this information. (R.74)

By her own admission, appellant did not meet respondent Rosenberg until February 15, 1983. (R.95) He can hardly have caused or contributed to the failure to inform appellant of various pension benefits before her retirement on September 1, 1982.

Appellant claims respondent Rosenberg was negligent in the conduct of her case. However, appellant's allegations fail to state a claim against respondent Rosenberg because appellant has not and cannot claim that respondent Rosenberg's actions or

inactions caused her any injury, or that she would have been able to recover or proceed in any manner other than what has eventuated as a result of respondent Rosenberg's acts. Becker v. Julien, Blitz & Schlesinger, P.C., supra.

Assuming for the sake of argument plaintiff had a claim against the City and the other respondents for alleged improper pension calculations, such a claim would have to be brought in the form of an Article 78 proceeding subject to a four-month statute of limitations. (See the decision of Justice James H. Shaw, Jr. R.12) Plaintiff cannot claim that the acts or omissions she alleged against respondent Rosenberg caused her any injury by preventing her from bringing such proceeding.

Appellant alleges September 1, 1982 as the effective date of her retirement (R.72); December 31, 1982 was the date of her first check which was received on or about January 2, 1983 (R. 72); the amount of her pension was approved by the respondent Teachers' Retirement Board on January 20, 1983. (R.72)

Appellant claims that respondent Rosenberg was retained by the respondent Union to represent her in a legal action against the Retirement System to gain needed information and to correct errors. (R.95) Appellant met with respondent on February 15, 1983 (R.95); on March 25, 1983 she spoke with an associate of respondent Rosenberg who discussed a possible four-month limitations period (R.95-96); and on April 5, 1983

she was informed by letter from respondent Rosenberg that he would not continue as her attorney, and she was again warned about a short limitations period which may be applicable. (R.96) A copy of that letter appears at R.490.

Assuming the limitations period began to run on the various dates alleged in the complaint, respondent Rosenberg's alleged inaction did not preclude appellant from maintaining an action.

If the limitations period commenced on the date of retirement, September 1, 1982 (R.72), it would have expired before respondent Rosenberg ever met the appellant on February 15, 1983. (R.95)

Appellant's first pension check was received on January 2, 1983 and was dated December 31, 1982. (R.72) Using these dates to commence the running of the statute of limitations, the limitations period would have expired either April 31, 1983 or May 2, 1983, after respondent Rosenberg notified her by letter of April 5, 1983 (R.96) that he would not continue as her attorney, which letter warned appellant of the possibly applicable short limitations period. (R.490)

The amount of appellant's pension was approved January 20, 1983. (R.72) Using this date it is clear that the limitations period would then have expired May 20, 1983, weeks

after respondent Rosenberg notified her he would no longer represent her and warning of the possibly applicable short limitations period. (R.96)

It is clear that there is nothing respondent Rosenberg did or did not do which caused or contributed to appellant's injury.

Conclusion

For all the reasons set forth above, the order of Justice A.D. Bernstein dismissing the complaint against respondent Rosenberg should be affirmed.

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BRIEF OF UNION DEFENDANT-RESPONDENT (PP. 780-798)

To be argued by:
D. Nicholas Russo
5 Minutes Requested

Supreme Court of the State of New York

APPELLATE DIVISION – SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR DEFENDANT-RESPONDENT PROFESSIONAL STAFF CONGRESS/CUNY

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PRELIMINARY STATEMENT

The plaintiff-appellant ("plaintiff") complains in this case that the Teachers' Retirement System of the City of New York ("TRS") -- a public pension system created by statute -- miscalculated her pension benefits.

She alleges in the complaint that various agencies of the City and State of New York -- Teachers' Retirement System, Teachers Retirement Board, Board of Higher Education of the City of New York, City University of New York, New York City Technical College and the Department of Insurance of the State of New York -- as well as the defendant-respondent union, Professional Staff Congress/CUNY ("PSC") and the lawyer retained by the union to investigate the merit of plaintiff's concerns about possible pension miscalculation, Lewis Rosenberg, (also a defendant-respondent), all played a part in wrongly denying her the totality of pension benefits to which she claims she is entitled.

At the time plaintiff filed the complaint in the New York Supreme Court, Kings County, she filed a virtually identical complaint against the same defendants in the United States District Court for the Eastern District of New York, alleging discrimination based on sex and religion and citing Title VII of the Civil Rights Act, 42 U.S.C. §2000e-5.

On November 14, 1985, Judge Jack B. Weinstein, in open court, dismissed the plaintiff's complaint as to all defendants. He ruled that her Title VII claims of discrimination were time-barred and that there had been no violations of the U.S. Constitution. In addition, Judge Weinstein stated that the appropriate route for plaintiff to challenge the calculation of her pension benefits was through her simultaneously filed, parallel state action; and he cited Article 78 of the CPLR.

Judge Weinstein's decision was upheld by the United States Court of Appeals of the Second Circuit on March 31, 1986.

In the instant action, the Court below dismissed the complaint against all the defendants: as to the City of New York, Teachers' Retirement Board of the City of New York, Teachers' Retirement System of the City of New York, and the Department of Insurance of the State of New York in a memorandum decision of Judge James H. Shaw, Jr., dated November 19, 1985, (Record, page 12); as to defendant Rosenberg in a memorandum decision of Judge A. D. Bernstein, dated December 24, 1985, (Record, pages 19-21); and as to the Board of Higher Education of the City of New York, City University of New York, New York City Technical College, and Professional Staff Congress/CUNY by Judge Barry Hurowitz in open court on December 20, 1985 (Record, Transcript of the Proceedings, pages 32-66, especially at pages 61-64). With the sole execption of defendant

Rosenberg, the Court dismissed the complaint on the ground that the actions were time-barred by a four-month statute of limitations. (The action against defendant Rosenberg was dismissed because of the failure of plaintiff to have set forth a cause of action.)

This brief is submitted by defendant PSC in support of the lower Court's dismissal of the complaint on the ground that the action was not commenced within the applicable four-month statutory limitation. It is submitted furthermore in support of its position that the action should have been dismissed on the additional ground that plaintiff failed to state a cause of action against defendant PSC or, alternatively, for summary judgment.

Questions Presented With Respect To Defendant Professional Staff Congress/CUNY

1. Did the plaintiff commence her proceeding against defendant Professional Staff Congress/CUNY ("PSC") in a timely manner under the applicable statute of limitations (CPLR §3211 (a)(5))?

   The Court below held that the action was time-barred by the applicable four-month statute of limitations.

2. Did the plaintiff fail to state a cause of action against defendant PSC (CPLR §3211 (a)(7))?

   The Court below did not address this issue.

3. Should summary judgment be granted to PSC (CPLR §3212)?

   The Court below did not address this issue.

STATEMENT OF FACTS

Plaintiff retired as a member of the faculty of New York City Technical College of the City University of New York as of September 1, 1982.

At all times relevant to this proceeding, defendant PSC was the unincorporated certified collective bargaining agent (union) of the instructional staff at the City University of New York (hereafter "CUNY") of which New York City Technical College was one constituent college. CUNY was a public institution created pursuant to Article 125, §6201 et seq., of the New York State Education Law. Inasmuch as plaintiff held the title of Professor, she was a member of the PSC bargaining unit, thereby covered by the terms of the union contract.

Section 470 of the New York State Retirement and Social Security Law made amply clear that at all times relevant to this case the union, PSC, and the public employer, CUNY, were prohibited from negotiating about matters of pension.

The New York City Teachers' Retirement System (hereafter "TRS"), which plaintiff maintains in the instant action miscalculated her pension entitlement and from which allegation flows her complaints against defendant PSC (and the other defendants as well), was the public retirement system established

pursuant to Title B of Chapter 20 of the Administrative Code of the City of New York.

Plaintiff met with defendant PSC's Director of Staff Relations Beryl Weinberg prior to plaintiff's retirement on September 1, 1982 (Record, page 580). PSC's Ms. Weinberg provided plaintiff with the same consultation that she had provided to other bargaining unit members contemplating retirement, regarding a projection of what her pension allotment would be, based upon information provided by plaintiff as to plaintiff's age and length of creditable service.

After plaintiff commenced receiving payment of her pension benefits on or about January 2, 1983 (Record, page 72:¶14 of plaintiff's complaint), she again met with defendant PSC's Ms. Weinberg.

PSC's Ms. Weinberg, after receiving permission from the union's executive director in or about February 1983 (Record, page 580), retained outside legal counsel, to wit defendant Lewis Rosenberg, who was to meet with the plaintiff and, if he deemed her allegations legally actionable, to institute a suit on her behalf for which the PSC would assume the legal fees.

When plaintiff became dissatisfied with the professional judgment of defendant Rosenberg in or about April of 1983,

defendant PSC decided it would no longer entertain plaintiff's unfounded suspicions regarding her pension allotment, and PSC refused to deal with her further on this matter (Record, pages 581-2).

Plaintiff commenced this action on defendant PSC by the service of a summons and complaint on October 29, 1985 (Record, pages 146-7 and 574).

ARGUMENT

POINT I

PLAINTIFF's ACTION IS BARRED BY THE STATUTE OF LIMITATIONS

If plaintiff stated a cause of action -- a matter challenged by defendant PSC in Point II, infra -- and if summary judgment is not granted (in accordance with the reasons set forth in Point III, infra), then plaintiff's action is barred by the statute of limitations.

In June, 1983, the United States Supreme Court in Del Costello v. Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed. 2d 476, held that the six-month limitation period governs cases against a union based on the union's alleged breach of the duty of fair representation. In so holding, the Supreme Court found applicable the six-month statute of limitations found in Section 10(b) of the National Labor Relations Act with respect to a private sector duty of fair representation charge before the National Labor Relations Board.

Since the Del Costello decision was handed down, the New York State Courts have consistently relied upon that case and applied the six-month statute of limitations to suits against labor unions. See: Alexander v. Mt. Sinai Medical Center, 96

A.D.2d 488, 465 N.Y.S.2d 201 (1st Dept., 1983); Lohier v. District 1199, 96 A.D.2d 884, 466 N.Y.S.2d 39 (2nd Dept., 1983); Taylor v. St. John's Episcopal Hospital, 96 A.D.2d 886, 466 N.Y.S.2d 43 (2nd Dept., 1983); Gerber v. Amalgamated Transit Union, 124 Misc.2d 306, 476 N.Y.S.2d 728 (Sup.Ct., Onondaga, 1984); and Callens v. Simmons Machine Tool Corp., 110 A.D.2d 994, 488 N.Y.S.2d 282 (3rd Dept., 1985).

Of particular significance is the case of Mohan v. United University Professions, 127 Misc.2d 118, 485 N.Y.S.2d 404 (Sup. Ct., Chautauqua, 1984), because there the Court applied Del Costello to a suit brought by a professor of the State University of New York (a public university like the City University of New York) against his faculty union (an affiliate of defendant PSC).

Recently, the Appellate Division, Third Department, applied the six-month statute of limitation period in a suit by a disgruntled employee alleging a breach of the duty of fair representation by his union. The court, likewise, rested its decision on Del Costello. Ferri v. Public Employees Federation, 115 A.D.2d 814, 495 N.Y.S.2d 759 (1985). And again in September of 1986, the Fourth Department of the Appellate Division, applied the six-month period to a math teacher seeking to sue her union. Baker v. Board of Education of West Irondequoit, 507 N.Y.S.2d 340.

Defendant PSC submits, however, that the more appropriate filing period is four months, not six months. The analogous provision of state law to the federal law's §10(b) of the National Labor Relations Act (which provides the six-month filing period for unfair labor practice allegations) is the rule of the New York State Public Employment Relations Board ("PERB") that sets down the four-month filing period for improper practice charges filed before it, to wit 5NYCRR, §204.1(a)(1). The purposes and jurisdiction of PERB over fair representation matters, inter alia, in the public sector in New York are parallel to that of the NLRB in the private sector. Therefore, the appropriate statute of limitations period to fair representation actions in the New York State public sector should be the four-month period within which such charges must be filed at PERB; this would be similar to the Del Costello rule that the six-month period is applicable in the private sector for cases filed with the NLRB in accordance with its filing period.

The argument for a four-month filing period is made all the more compelling by the fact that the U.S. Supreme Court in Del Costello recognized the desirability of having the same statute of limitations period for suits brought against both the employer and the union, as here. Since, under Article 78 of the CPLR, suits against public employers -- as is the City University of New York and the other government agency defendants in the

instant case -- must be commenced within four months and since the PERB filing period is likewise four months, the more appropriate filing period in the instant case for a suit against a union should be deemed to have been four months.

In either event, the defendant PSC's Motion to Dismiss must be granted because plaintiff did not commence her action until well beyond either the four-month or the six-month statutory period, not until October 29, 1985. The last possible time that the defendant PSC, even for argument's sake, could have harmed plaintiff was in April, 1983, when PSC refused to provide plaintiff with a second lawyer, since the first lawyer that it provided to her -- defendant Rosenberg -- had declined to represent her. Nor has plaintiff established a continuing harm since the U.S. Supreme Court has held that an allegation of discrimination does not become a continuing violation by virtue of its adverse continuing effect on an employee's benefits. See United Airlines v. Evans, 432 U.S. 553 (1977).

POINT II

PLAINTIFF FAILS TO STATE A
CAUSE OF ACTION AGAINST DEFENDANT PSC

It is black letter labor law that a union owes a duty of fair representation to its bargaining unit members and that duty exists by virtue of the union's exclusive representation of those employees. Substantively, the duty applies both to a union's negotiation of new contract terms and to its enforcement of existing contract terms. It is a duty, however, that exists only by reference to the employer. For the union exists solely to negotiate about and to enforce agreements with the employer regarding terms and conditions of employment.

In the public sector involving employees of public employers (as is the City University of New York by virtue of §6201 et seq. of the New York State Education Law), that which is bargainable by or off limits to the parties is sometimes set fortn in law. Pertinent to the instant case is §470 of the New York State Retirement and Social Security Law, which prohibited public employers from negotiating about retirement benefits with public employee unions for a defined period, including the period relevant to this case. This proscription included the time period between plaintiff's visit to PSC's Ms. Weinberg, which occurred prior to plaintiff's retirement, and through and beyond the time when defendant PSC retained outside counsel,

defendant Rosenberg, to examine the merits of plaintiff's discontent over the amount of her pension entitlement.

In any event, the New York City Teachers' Retirement System was a separate, legally constituted entity (established pursuant to Title B of Chapter 20 of the New York City Administrative Code); and since plaintiff's employer, CUNY, and union, PSC, were prohibited from negotiating about pensions, and since defendant PSC had neither legal authority nor control over any of the actions of the pension system, the defendant PSC owed no duty to plaintiff regarding any allegations of miscalculation, which is the underlying gravamen of her complaint. Nor did the union play any part in the actions taken by the pension system vis-a-vis plaintiff.

Therefore, since defendant PSC's fair representation duty to plaintiff flowed only in the direction of the employer-university, regarding the terms of their collective bargaining agreement and since defendant PSC played no role in the pension system's allocation of plaintiff's retirement benefit, plaintiff has asserted no viable action against defendant PSC, regarding possible miscalculations of pension entitlements made by the independent public retirement system, TRS. Accordingly, plaintiff has failed to state a viable claim against the defendant-union, PSC.

POINT III

SUMMARY JUDGMENT SHOULD BE GRANTED TO DEFENDANT PSC

Even if defendant PSC owed a duty to plaintiff regarding the latter's allegation of a miscalculation of her pension entitlement made by the separate public pension system, then defendant PSC discharged that duty by retaining outside counsel to evaluate and pursue, if appropriate, the merits of plaintiff's dissatisfaction with the amount of her pension entitlement.

If the lawfirm or lawyer-defendant thereof committed any negligence or malpractice -- not an allegation asserted by this defendant -- defendant PSC is not responsible as a matter of law because the said lawfirm and lawyer were not agents or employees of the defendant PSC but rather served in the nature of an independent contractor.

Therefore, since defendant PSC went above and beyond its duty and retained outside legal counsel for plaintiff and since defendant PSC could not be held culpable as a matter of law for any negligent act of said outside counsel, the relief requested, summary judgment, should be granted in favor of defendant PSC.

CONCLUSION

For the foregoing reasons, the appeal of plaintiff-appellant Alice Clissuras should be denied in all respects, with costs and disbursements granted to defendant-respondent Professional Staff Congress/CUNY.

Respectfully Submitted,

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PLAINTIFF-APPELLANT'S REPLY BRIEF
TO STATE, UNION ATTORNEY, AND
UNION DEFENDANTS-RESPONDENTS
(PP. 799-817)

To be argued by
ALICE CLISSURAS
60 Minutes Requested

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

PLAINTIFF-APPELLANT'S REPLY BRIEF

PRELIMINARY STATEMENT

Plaintiff-appellant submits this reply brief to respond to the brief of defendants-respondents City University (Board of Higher Education of the City of New York, City University of New York, and New York City Technical College) and Department of Insurance; the brief of defendant-respondent Professional Staff Congress/CUNY; and the brief of defendant-respondent Lewis Rosenberg. The City defendants-respondents (City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York) have not submitted a brief to date.

RESPONSES TO BRIEFS

A. COMBINED RESPONSES REPLYING TO ALL OF THE SUBMITTED BRIEFS OF DEFENDANTS-RESPONDENTS

1. Plaintiff completed 34 years of service at defendant College. Her pension was calculated at the rate of 2½% for 29 years.

This is fraudulent. Plaintiff was falsely deprived of 5 service years and the 30-year entitlement. Plaintiff documented the fraud by showing 5 fraudulent versions of the pension given to her by the Pension System, City University, and the Union (Rec. on Ap., pp. 213-215, 501, 608).

Not one defendant, in any paper to date, even mentions this claim. See all papers on the record. This constitutes concealment of cause of action. Not one attorney has addressed this claim. See all submitted briefs. Not one Court has addressed this claim. See all the orders below and the orders of the Federal Courts.

The concealment of this cause of action by each and every defendant establishes a fact pattern for conspiracy to defraud since that is the only basis upon which total concealment of the cause of action could have occurred.

This claim deprives plaintiff of her Constitutional right of equal protection of the laws on the bases of her sex and religion. Not one defendant has provided a non-discriminatory reason for a 29-year pension in the place and stead of a 34-year pension. The discrimination continues.

Male and/or non-Christian teachers are receiving full pensions which include 30-year entitlements.

Not one defendant has provided any argument to dispute this claim; no one has provided any documentation to dispute this claim; no one has stated that the pension plan involved here is the Career Pension Plan and that the Pension Law providing for that Plan is being violated by the defendants. It is inconceivable to plaintiff that the discriminatory and fraudulent determination of her pension, which is the focal claim in her complaint is not even mentioned, considered, or addressed by the defendants and that the Courts below improperly dismissed the complaint without even mentioning this claim. This claim involves issues of fact which are not subject to dismissal without trial. CPLR §3211(c).

The Courts below and the attorneys for defendants-respondents state that plaintiff's claims are barred by the four-month statute of limitations (plus in several instances a failure to establish cause of action). No one states the wrong from which the cause of action accrues. The Courts do not state it and the attorneys do not state it. What is the wrong which starts the four-month statute? Is it the discrimination? Is it the fraud? Is it the conspiracy? Is it the concealment of the causes of action? Is it the deprivation of Constitutional rights? Is it the breach of contract? Is it the breach of fiduciary duty? The Courts and the attorneys do not address or respond to any of these claims, all of which are documented by plaintiff. The defendants have not shown

that plaintiff knew that her 34 years of service were reduced to 29 for the pension at any time prior to July, 1985. Plaintiff documents the time when she discovered this claim (Rec. on Ap., p. 570). Prior to July, 1985, defendants were providing fraudulent versions of plaintiff's pension which were in the semblance of a 34-year pension. They also fraudulently stated that the pension plan was the plan contained in the Administrative Code of the City of New York, Chapter B20, §41.2. It was much later that plaintiff discovered that the plan was the Career Pension Plan. The Courts and the defendants do not respond to this.

Each and every defendant concealed each and every cause of action. Plaintiff discovered each cause well after retirement. With the discovery of the 29-year factor in July, 1985, plaintiff was able to determine the method by which the amount of pension was calculated. She immediately brought this legal action, in August, 1985.

The Courts below and the attorneys for defendants-respondents do not state the wrong from which the four-month statute begins to run because it would then be patently clear that there is no four-month statute which applies to discrimination, fraud, concealment, Constitutional guaranties, conspiracy, and breach, as to all of which claims the statute of limitations has not expired. Albeit it is inapplicable, the July, 1985, discovery is even within the four-month statute.

Defendants conspired to conceal the causes of action and to prevent plaintiff from retaining an attorney. They

blocked plaintiff in all of her attempts to obtain information. They elongated the time throughout this matter by their concealments and conspiracy and then, their only defense is an inapplicable four-month statute which they do not ascribe to a particular wrong.

Plaintiff is not an attorney and no one appears to take note of or to respond to the deprivation of her Constitutional right to legal representation.

2. As to her second cause of action, plaintiff completed 34 years of service at defendant College. She was required to purchase a portion of those years as "outside service." Despite the purchase, the years were not included in the calculation of plaintiff's pension.

This second claim involves fraud, discrimination, concealment of causes of action, conspiracy, deprivation of Constitutional rights, and breach, for all of the reasons stated above for claim "1." This second claim took the same route as claim "1" and the statements made above for claim "1" apply here to claim "2" as though they were fully repeated here. The law providing for service credit was violated. The defendants do not even mention this claim and the law governing service. The Courts below were also silent as to this claim.

The two claims set forth above are substantial claims. The Courts and the defendants do not address the two claims in any manner. The defendants do not state the pension plan and do not state the rules for service. The Courts do not state

the causes of action and dismiss unspecified causes which include many issues of fact.

Plaintiff sets forth the above two claims as illustrations of the failure of the defendants-respondents to respond, to counter, to dispute, and to provide documentation. They failed to do so as their briefs clearly show, not only for the above two claims but also for the many other claims in the complaint. The Courts below did not respond and did not require the defendants-respondents to make any response.

B. RESPONSES REPLYING TO BRIEF OF DEFENDANTS-RESPONDENTS CITY UNIVERSITY AND DEPARTMENT OF INSURANCE

The brief submitted by Robert Abrams, Attorney General of the State of New York, by Anne Ehrenkranz, A.A.G., attorney for defendants-respondents City University and Department of Insurance, is so full of misstatements, errors, and misinterpretations that it is difficult to deal with all of them.

1. At no point does Attorney Ehrenkranz respond to, counterargue, disprove, or provide any documentation in response to plaintiff's claims of discriminatory and fraudulent calculation of pension and crediting of prior service.

2. At no time, in any paper, has plaintiff claimed that the Department of Insurance had a fiduciary responsibility to inform plaintiff about pension options before retirement and

that it was negligent in not crediting plaintiff with New York State Pension years. As plaintiff's papers clearly show, plaintiff claims that the Department of Insurance was discriminatory and fraudulent when in the final letter, dated June 7, 1985, it was stated that all errors had been corrected and adjustments had been made in the computation of plaintiff's benefits (Rec. on Ap., p. 405). Nowhere in all the correspondence with the Insurance Department is there an explanation to support that statement. See entire correspondence with Insurance Department (Rec. on Ap., pp. 342-407).

Further, plaintiff claims that the Insurance Department, in conspiracy with the defendants, concealed the causes of action after retirement. It concealed that plaintiff's pension was a 29-year pension instead of a 34-year pension; it concealed that plaintiff's service was credited fraudulently; it concealed the fraud.

Attorney Ehrenkranz states that plaintiff's letters to the Insurance Department after receipt of the Department's January 31, 1985 letter are only "contentious requests for reconsideration" (Ehrenkranz Brief, p. 12). It appears that Attorney Ehrenkranz has not read the January 31, 1985 letter which consists of untrue, undocumented, and violative statements; (Rec. on Ap., pp. 392-393); and she has not read plaintiff's response of February 25, 1985, which provides documentation in 7 enclosures (Rec. on Ap., pp. 394-404) and which could hardly be characterized as a "contentious request for reconsideration."

Plaintiff discovered that her pension had been calculated for 29 years in July of 1985. This had been concealed by the Insurance Department up to and including its final letter of June 7, 1985, and the Defendant Insurance Department continues this concealment as is patently clear from all the papers herein including Attorney Ehrenkranz's brief. This concealment was total on the part of all defendants and it continues to date. Further, it was committed as part of defendants' conspiracy to deprive plaintiff of her pension benefits.

As to the fraud, instead of disproving it, Attorney Ehrenkranz states that plaintiff does not plead fraud with the specificity required by CPLR §3016(b). In the complaint, plaintiff set forth the fraud in great detail. Every incident and claim of fraud has been documented by plaintiff, which documentation is included in the Record. Not one defendant has presented even one shred of documentation to disprove the claim of fraud.

Attorney Ehrenkranz continues to err in her brief when she states in her brief on p. 15 that plaintiff uses as the standard for subject matter jurisdiction, as to the Supreme Court and the Insurance Department, plaintiff's convenience. After reading plaintiff's arguments on pp. 34-35 of Plaintiff's Brief, it can only be ludicrous to find that plaintiff's convenience was the basis of the arguments, by any stretch of imagination or interpretation. How Attorney Ehrenkranz came to

a conclusion of plaintiff convenience and missed plaintiff's arguments for serving justice and being mindful of the Court's time is beyond comprehension.

3. As to the City University Defendants, their concealment of the 29-year pension and improper service credit is continued in Attorney Ehrenkranz' brief. On its records, City University has plaintiff retiring in 1977 and in 1982. The Attorney not only does not disprove this, but she also does not respond to any of these claims.

The defendant College is a principal actor in plaintiff's case, as plaintiff's employer. Here, the Attorney does not attempt to respond to the wrongs committed by the College. The College refuses to give plaintiff a copy of any of her records. In the lower Court, altered evidence was used to falsely support an argument as to said records (Rec. on Ap., pp. 541-542, ¶f). Refusal of the records is a violation of law, to which no one responds.

In a letter dated February 23, 1983, the City University Pension Officer sent plaintiff a fraudulent version of her pension. Attorney Ehrenkranz describes this on p. 9 of her brief as the time when plaintiff knew that the University disagreed with her position regarding the calculation of her pension. In February of 1983, plaintiff had no knowledge of the concealments as to pension and service. Plaintiff did not discover all of the pension items until July, 1985. The Pension Officer was concealing, not disagreeing; however, plaintiff was

not completely aware of this until much later. For plaintiff's arguments as to the Pension Officer's letter, see Rec. on Ap., pp. 533-534.

4. On p. 7 of her brief, Attorney Ehrenkranz states that Special Term (Shaw, J.) dismissed the complaint on the ground that the four-month limitation applicable to Article 78 applied and that it had expired. Justice Shaw does not state this in his Memorandum Decision (Rec. on Ap., p. 12) and he does not state this in his Judgment (Rec. on Ap., pp. 9-11). Nowhere does Justice Shaw state the nature of plaintiff's action and the claims he dismissed. Nowhere does he mention Article 78. There is no indication in Justice Shaw's decision of the reason for the applicability of a four-month Statute of Limitations.

The order signed by Justice Hurowitz does not state the nature of the case and the claims; there is no mention of a four-month statute; he grants dismissal without any reason.

Paragraphs 1-4 above do not constitute a complete reply to the Brief of Defendants-Respondents City University and Department of Insurance.

C. RESPONSES RELYING TO BRIEF OF DEFENDANT-RESPONDENT PROFESSIONAL STAFF CONGRESS/CUNY (UNION)

To begin to respond to the brief of the Defendant Union becomes an overwhelming task due to the volume of response

required by this brief primarily due to its omissions. Attorney Russo does not even mention fraudulent pension amount and service, conspiracy, and concealment of the causes of action.

The Pension officer of the Union gave plaintiff a fraudulent version of her pension calculation. It was in the form of the formula in Code B20; it concealed the correct plan; and it did not provide for the 30-year allowance. The Union version arrived at 2½% for 29 years of normal pension by using an obsolete, inapplicable form to conceal the fraudulent use of 29 years. According to the correct plan plaintiff should have received 2½% for 34 years, plus a 30-year allowance. The attorney for the Defendant Union does not mention this claim at all.

Plaintiff's service of 34 years was credited fraudulently in the pension calculation. The Union Pension officer concealed the rules for crediting service. The attorney does not mention this claim at all.

The pension and service claims constitute concealment of causes of action, a claim to which the attorney does not respond in his brief.

All of the defendants acted in a conspiracy to deprive plaintiff of her pension benefits. In a civil conspiracy, the essence of averment of a conspiracy is the joining of all defendants and holding them responsible for the acts of each other. Connor v. Bryce, 1750 N.Y.S. 94, 95-96 (1918). The Union is joined to the defendants by virtue of the conspiracy.

Further, the Union does not provide information to the members widely. Members are informed individually of their

entitlements, a practice which leads to the most invidious form of discrimination.

The Union pension version was the first one received by plaintiff and it was received prior to retirement. In his brief, Attorney Russo states, on p. 13, that the Union owed no duty to plaintiff regarding her claims of miscalculation and that the Union played no role in the pension system's determination of the pension. He, then, concluded that plaintiff failed to state a viable claim against the Union. By so stating, in effect, he characterizes fraud as a miscalculation and conspiracy as a "no role." He also does not respond to concealment and discrimination.

As to breach of duty of fair representation, Attorney Russo deals with this by discussing the merits of the applicable six- or four-month statute of limitations arriving at the conclusion that plaintiff's action was commenced well after April, 1983, when the Union Attorney unilaterally withdrew his representation; thus, both limitations barred plaintiff's suit. (Russo's Brief, p. 11) Correspondence between plaintiff and the Union regarding plaintiff's claims continued after April, 1983, and into 1984 (Rec. on Ap., pp. 614-633). The letters show clearly that the causes of action herein were concealed by the Union throughout. They continue to be concealed as is evident from Attorney Russo's brief. The conspiracy continues.

To avoid extending this reply unduly, I set forth one misstatement as illustrative of such statements in place of a complete listing. On p. 6 of his brief, Attorney Russo

states that plaintiff became dissatisfied with the Union attorney in April of 1983 and that the Union at that point decided to stop indulging plaintiff's unfounded suspicions regarding her pension. First of all, the Union attorney withdrew unilaterally. Second, if plaintiff's claims are unfounded suspicions, it should be a simple matter to prove this by presenting the pension plan. The President of the Union had told plaintiff that he would send her a copy of the plan but he never did so. Third, the Union did not stop indulging as of April, 1983, and did not consider plaintiff's claims unfounded suspicions. The letters from the Union disprove this (Rec. on Ap., pp. 618-633).

D. RESPONSES REPLYING TO BRIEF OF DEFENDANT-RESPONDENT LEWIS ROSENBERG

Again, responding to the brief of a defendant-respondent becomes an overwhelming task due to the volume of response required due to omissions and misstatements.

Attorneys Zichello and McIntyre do not even mention fraudulent pension amount and service, conspiracy, and concealment of the causes of action.

Plaintiff met with Defendant Rosenberg only once. At that meeting, Defendant Rosenberg viewed plaintiff's Report of Actuary, second version of pension by the Chief Actuary, purchase of service papers, and several Statements of Accounts. Defendant Rosenberg concealed the fraudulent pension amount, the

improper purchase, and all other pension and legal information as to plaintiff's rights.

On p. 8 of their brief, the Attorneys state that since plaintiff claims she was not informed about a 30- or 35-year bonus prior to her retirement, then Defendant Rosenberg could not have caused the failure to inform. First, plaintiff has never claimed that Defendant Rosenberg failed to inform plaintiff prior to retirement. Second, the 30- and 35-year pensions are just that; pension calculations for those years with additional percentages for length of service over 30 years. Defendant Rosenberg failed to inform plaintiff after retirement that her pension had been fraudulently calculated and that she had improperly been required to purchase city service as outside service. By these concealments, Defendant Rosenberg joined the conspiracy to deprive plaintiff of her pension and thus became joined in the wrongs.

Plaintiff is not an attorney. In February of 1983, if Defendant Rosenberg mentioned an Article 78, plaintiff had no background to understand such a proceeding and to know of her legal options and causes. In his letters, Defendant Rosenberg made reference to a short Statute of Limitations which may be applicable. However, from February, 1983 to April 5, 1983, he took no action which is indicative of little concern for the expiration of a short statute. Moreover, his Associate Rothman informed plaintiff of his view of the applicable statute as a 3-year limitation. On pp. 3 and 9 of their brief, the Attorneys state that Associate Rothmen discussed a

possibly applicable four-month statute with plaintiff and the attorneys refer the reader in both instances to pp. 95-96 of the Rec. on Ap. The Record shows on those pages that Associate Rothman viewed the limitations period as three years.

Defendant Rosenberg disengaged himself in April of 1983. He did not inform plaintiff of her pension and legal rights. He did not protect plaintiff in any meaningful way as to a possibly applicable statute of limitations. Further, after this experience with Defendant Rosenberg, plaintiff was not able to retain an attorney despite consulting with over 30 attorneys. This deprived plaintiff of her Constitutional right to counsel.

The Attorneys here make reference to several dates early in 1983 by which the 4-month statute of limitations would be deemed to have expired.

What these Attorneys, as well as all of the attorneys, all of the parties, and all of the Courts fail to consider, mention, or state is: What did the plaintiff know about the pension in 1983 to bring an action. All of the correspondence with all the defendants herein clearly show that plaintiff did not know that her 34 years of service had been reduced to 29 years to deprive her of over $10,000 per year on her pension benefits. Plaintiff discovered in July of 1985 that her pension was a 29-year pension. Not one of the defendants has even mentioned this; the concealment continues as the briefs of all the defendants clearly show. The concealment continues as the refusal to give plaintiff a copy of her record persists.

CONCLUSIONS

The defendants ignore the causes of action. The Courts do not mention them; the Courts dismiss issues of fact without a trial; and the Courts dismiss causes of action without specifying them and the reasons for their dismissal.

The Article 78 proceeding is not appropriate for the claims of discrimination, fraud, conspiracy, concealment, deprivation of Constitutional rights, and breach. Plaintiff argues this in her brief with supporting citations.

In her brief and this reply brief, plaintiff cannot completely argue all of the causes herein due to the large number of claims and due to plaintiff's pro se status. Thus, plaintiff does not set forth the items in her papers as complete presentations but instead as substantial illustrations of the causes herein.

WHEREFORE, for all of the reasons set forth in all of plaintiff's papers in this action, this Court should reverse the three Orders of the Supreme Court of the State of New York, Kings County, dismissing the complaint and order a trial by jury of the facts in dispute herein as Constitutionally protected. Plaintiff has been deprived of Constitutional due process to date.

Dated, December 24, 1986

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff-Appellant

BRIEF FOR CITY DEFENDANTS-RESPONDENTS
(PP. 818-840)

To be argued by:
Michael S. Adler
(5 minutes)

NEW YORK SUPREME COURT
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR RESPONDENTS CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD, AND TEACHERS' RETIREMENT SYSTEM

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January 26, 1987.

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NEW YORK SUPREME COURT
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

BRIEF FOR RESPONDENTS CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD, AND TEACHERS' RETIREMENT SYSTEM

PRELIMINARY STATEMENT

This is an action by plaintiff pro se,[1] a retired college professor challenging the computation of her pension, against the bodies responsible for computing the pension, those that formerly

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[1] Although plaintiff is not an attorney, she has had some legal education. Prompted by her pension complaints, plaintiff entered Brooklyn Law School in September, 1984, and attended for three semesters. Brief for Appellant at 15, Clissuras v. City of New York, No. 85-9002 (2d Cir., 1986).

employed her, a state regulatory agency to which she complained, her labor union, and an attorney whom the union retained on her behalf to contest the pension. Among the allegations raised are miscalculations, discrimination based upon her Greek Orthodox faith and her sex, fraud, conspiracy, and failure to give proper advice. In this consolidated appeal, plaintiff appeals to this Court from (1) a judgment of the Supreme Court, Kings County (Shaw, J.), entered on March 16, 1986,[2] dismissing her complaint as against defendants City of New York, Teachers' Retirement Board, Teachers' Retirement System, and Department of Insurance as time-barred (9-11);[3] (2) a memorandum decision[4] of the Supreme Court, Kings County (Beinstein, J.), dated December 24, 1985, dismissing her complaint as against defendant Lewis Rosenberg for failure to state a cause of action (19-21); and (3) an order of the Supreme Court, Kings County (Hurowitz, J.), dated February 14, 1986,[5] dismissing her complaint as against defendants Board of Higher Education, City University,

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[2] Although the copy of the judgment in the record on appeal contains no legible indication of entry, the municipal defendants' records show that the judgment was entered on this date.

[3] Numerical references in parentheses are to pages of the record on appeal, unless otherwise noted or apparent.

[4] It is not apparent from the record on appeal prepared by plaintiff whether there was an accompanying order or whether any such order was entered.

[5] It is not apparent from the record on appeal whether this order was entered.

New York City Technical College, and Professional Staff Congress as time-barred (29-30).

QUESTIONS PRESENTED

1. Were plaintiff's allegations concerning miscalculation of her pension properly dismissed as time-barred, where plaintiff's suit was commenced more than four months after the calculations became final and binding upon her?

2. Were plaintiff's allegations that the municipal defendants failed to honor her pre-retirement requests for counselling concerning how to maximize her pension benefits properly dismissed, where they fail to state a cause of action and are time-barred, since the municipal defendants had no duty to provide such counselling and since, in any event, the alleged breaches of duty took place more than four months before suit was brought?

3. Were plaintiff's allegations of conspiracy and fraud properly dismissed, where New York State recognizes no cause of action for civil conspiracy and where, in any event, plaintiff's conclusory complaint fails to plead elements essential to such causes of action?

4. Was plaintiff's procedural due process claim properly dismissed, where the claim is patently unmeritorious on its face, is barred by collateral estoppel, and is time-barred?

5. Was plaintiff's State Human Rights Law claim of discrimination based upon her sex and her Greek Orthodox religion

properly dismissed, where the claim is conclusory, is barred by the pendency of an administrative discrimination charge with the State Division of Human Rights, and, at least in part, is time-barred?

FACTS

(1)

Plaintiff was born on August 23, 1926 (219). She served for many years as a professor at a college affiliated with what is now the City University of New York (72). Effective September 1, 1982, plaintiff retired from this employment (72).

On January 2, 1983, plaintiff received her first monthly pension check (72). It was computed on the basis of the December 1, 1982 determination of defendant Teachers' Retirement System that plaintiff was entitled to annual benefits of $31,185.03 -- a determination that defendant Teachers' Retirement Board approved in a "final disposition" dated January 20, 1983 (213).

Plaintiff complained to the Teachers' Retirement System that the computation was erroneous and that a greater allowance was due her. By letter dated February 7, 1983, the System's Chief Actuary responded with a detailed explanation as to the method of calculation (214-15). In brief, the actuary explained that the pension was calculated on the bass of 34 years of service by adding one sum for the first 20 years of service, a second sum for an additional 2.5 years of outside service, a third sum for an additional 11.5 years of

service, and a fourth sum representing an "Increased-Take-Home-Pay" accumulation and by subtracting a sum representing a deficit resulting from a loan (214-15).

Plaintiff also complained to her labor union, the Professional Staff Congress, about the amount of the pension. By letter dated February 2, 1965, the union advised plaintiff that it had engaged a law firm to investigate the matter and to bring a legal action, if necessary (467). By letter dated February 4, 1983, the law firm advised plaintiff to contact it immediately, since litigation may be subject to a short statute of limitations (468). Following discussions, the law firm selected an actuary to investigate the matter (469). Plaintiff, however, was uncooperative, advising her attorney that she had confidence neither in him nor in the selected actuary (469). Accordingly, by letter dated April 5, 1983, the law firm advised plaintiff that it could not continue to represent her (469).

Thereafter, plaintiff complained further to the Teachers' Retirement System and to the Teachers' Retirement Board. On October 19, 1983, she submitted to the Board a lengthy memorandum (220-64). Further, the Board permitted her to voice her complaints orally before it at one of its meetings held on or about the same date (187). The Board advised plaintiff that the Executive Director of the Teachers' Retirement System would respond (187). On December 14, 1983, the Executive Director sent plaintiff a detailed 15-page memorandum which analyzed her complaints and which once again explained that the computation was accurate (390).

On January 19, 1984, plaintiff wrote the Executive Director that she was unsatisfied with his explanation (408-12). She requested a meeting, explaining: "I do not think it is possible to discuss these matters in an exchange of letters" (412). In compliance with her request, the Executive Director scheduled such a meeting (413). Plaintiff, however, asked that this meeting be cancelled (413). Thereafter, at plaintiff's request, the Executive Director scheduled a new meeting for March 28, 1984 (413).

Present at the March 28, 1984 meeting besides plaintiff were the Executive Director and the Assistant Director of the Retirement System as well as the Retirement System's Chief Actuary (413). The meeting lasted for two and one-half hours, and all of plaintiff's complaints were discussed, with explanations again provided (413-15). At the conclusion of the meeting, plaintiff requested written explanations (413). Again, the System complied, in a letter from the Executive Director dated May 30, 1984 (413-15).

The Retirement System and the Retirement Board were not, however, the only recipients of plaintiff's complaints. During 1984, she wrote several letters as well to her Congressman and to the State Insurance Department (342-75, 389-91). In a letter to her Congressman dated August 29, 1984, the State Insurance Department advised: "After a detailed review it is the opinion of the Department that the benefits have been correctly calculated, and that Miss Clissuras had been furnished with complete and correct answers to all of the questions raised, many of them of a highly technical nature"

(391). Still, plaintiff persisted with further letters of complaint to, among others, the Retirement System and the Insurance Department (247, 379-81, 386-88, 394-96, 405, 406). Both entities responded that the calculations were correct and that plaintiff had already been furnished with detailed explanations (274, 397, 405).

(2)

On June 20, 1985, plaintiff filed a discrimination charge with the United States Equal Opportunity Commission (198-200). She alleged discrimination on the basis of her sex and her Greek Orthodox Christian religion with regard to her pension in that she was deprived of certain increments, of proper credit for her service years, and of proper counselling and in that she was harmed by computational errors (198-200). On August 9, 1985, she was issued a right-to-sue letter, the EEOC having decided not to initiate legal action on her behalf.

In July, 1985, the same charge was filed with the New York State Division of Human Rights. Br. App. at 19. It remains pending. Br. App. at 19.

(3)

Thereafter, plaintiff commenced two virtually identical lawsuits -- one in state court and one in federal court - - against the City, the Teachers' Retirement Board, the Teachers' Retirement System, the Board of Higher Education, the City University, New York City Technical College, the Professional Staff Congress, the

Department of Insurance, and attorney Lewis Rosenberg. The federal action was commenced on August 26, 1985 and the state action was commenced on August 27, 1985 (152).

Plaintiff raised four causes of action. The first cause of action alleged that, unlike male and non-Christian professors, plaintiff did not receive a pension premium for 30 years of service and did not receive counselling before retirement concerning how to maximize her benefits (72-77). The second cause of action alleged that, unlike male and non-Christian professors, plaintiff was denied proper pension credit for the years 1951-1953 and that, when she transferred between retirement systems in 1981, she was forced to make a pension contribution of $2,501.54 to cover those years (77-83). The third cause of action alleged gross negligence and computational errors regarding plaintiff's financial records, resulting in pension checks of a lesser sum than that to which she is entitled (83-87). The fourth cause of action alleged that the responses to plaintiff's inquiries and complaints were insufficient (87-101).

(4)

On November 14, 1985, the United States District Court for the Eastern District of New York (Weinstein, J.) dismissed plaintiff's federal court action. Judge Weinstein ruled that the complaint alleged no legitimate constitutional violations; that plaintiff's Title VII claims were untimely; and that plaintiff's pendent state-law claims would not be entertained, since plaintiff had not exhausted her Article 78 and

other state-law remedies. By order entered on March 31, 1986, the United States Court of Appeals for the Second Circuit affirmed. By order dated June 4, 1986, the same Court denied plaintiff's motion for rehearing en banc. Plaintiff thereafter petitioned the United States Supreme Court for a writ of certiorari. The Supreme Court denied the petition on November 4, 1986 (55 USLW 3315 (1986)), and, on January 12, 1987, also denied plaintiff's petition for rehearing (55 USLW 3474 (1987)).

(5)

With regard to the instant state court action, the municipal defendants, by motion returnable on November 13, 1986, moved to dismiss the action as time-barred in light of the 4-month statute of limitations for Article 78 proceedings set forth in CPLR §217 and in light of the 3-year statute of limitations for discrimination claims set forth in Executive Law §296; as barred by plaintiff's failure to file a notice of claim; and as failing to state any cause of action (148-53; 291-93).

By motion returnable on the same date, defendant Department of Insurance likewise sought dismissal, on the grounds of lack of subject-matter jurisdiction, failure to state a cause of action, and lapse of the statute of limitations (301-07).

In a memorandum decision dated November 19, 1985, the Supreme Court, Kings County (Shaw, J.), granted these motions, ruling that all causes of action against these defendants are time-barred (12).

Thereafter, by motion returnable on December 5, 1985, defendant Lewis Rosenberg moved to dismiss the complaint against him for failure to state a cause of action (439-44). In a memorandum decision dated December 24, 1985, the Supreme Court, Kings County (Bernstein, J.), granted the motion (19-21). The Court held that since plaintiff was able to assert all of her claims in the instant action and since plaintiff's pension grievance predated her first meeting with Rosenberg, she suffered no harm as a result of any malpractice on Rosenberg's part (19-21).

Finally, by separate motions returnable on December 20, 1985, defendant Professional Staff Congress -- on the one hand -- and defendants Board of Higher Education, City University, and New York City Technical College -- on the other hand -- moved to dismiss the complaint as against them on the grounds of failure to state a cause of action and lapse of the statute of limitations (491-98; 571-77). By order dated February 14, 1986, the Supreme Court, Kings County (Hurowitz, J.), granted the motions and dismissed the actions as against these defendants as time-barred (29-30; 64).

ARGUMENT

THE COURT BELOW PROPERLY DISMISSED PLAINTIFF'S COMPLAINT AS AGAINST THE MUNICIPAL DEFENDANTS, INASMUCH AS PLAINTIFF'S VARIOUS ALLEGATIONS EITHER FAIL TO STATE A CAUSE OF ACTION, ARE BARRED BY THE STATUTE OF LIMITATIONS, OR ARE OTHERWISE NON-COGNIZABLE.

With regard to plaintiff's allegations that the pension amount to which she is entitled was improperly computed, it is clear beyond peradventure that all such claims are time-barred. It is well-established that where allegations are of the type that can be pursued in an Article 78 proceeding, the four-month statute of limitations applicable to Article 78 proceedings applies to those allegations, without regard to the procedural vehicle used to assert them. Solnick v. Whalen, 49 NY2d 224, 229-30 (1980). Plaintiff's allegations concerning improper computation could undoubtedly have been raised in an Article 78 proceeding. Martoni v. New York State Teacher's Retirement Sys., 105 AD2d 511 (3d Dept., 1984) (Article 78 proceeding used to allege that pension benefits were erroneously calculated in violation of applicable law); see Nassau County Health Facilities Ass'n v. Axelrod, 110 AD2d 638 (2d Dept., 1985) (Article 78 proceeding used to contest computation of Medicaid reimbursement rate); Twenty-First Point Co. v. Town of Guilderland, 101 AD2d 407 (3d Dept., 1984), aff'd, 64 NY2d 954 (1985) (Article 78 proceeding used to challenge computation of taxes due). Accordingly, these

allegations are governed by CPLR 217, which applies to Article 78 proceedings, and plaintiff was therefore obliged to assert them within four months after the determination that she contests became final and binding upon her. CPLR 217. The date on which the challenged pension calculation became final and binding upon plaintiff is probably December 1, 1982 (the date that defendant Teachers' Retirement System rendered its determination as to the pension amount) and certainly is no later than either January 2, 1983 (the date that plaintiff received her first pension check) or January 20, 1985 (the date that defendant Teachers' Retirement Board approved the computation).[6] In either case, the four-month statute lapsed long before plaintiff's August 27, 1985 commencement (152) of this action. Moreover, the statute was extended neither by plaintiff's repeated requests for reconsideration (Fiore v. Board of Educ. Retirement Sys., 48 AD2d 850 (2d Dept., 1975), aff'd, 39 NY2d 1016 (1976) nor by the fact that the challenged determination covered benefits to be paid over a succeeding period of several years (see Twenty-First Point Co. v. Town of Guilderland, supra) (limitation period lapsed irretrievably four months after tax benefit determination made in 1980, notwithstanding fact that determination governed tax benefits to be reaped in each year of a succeeding ten-year period).

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[6] To the extent that plaintiff's assertion of error is based upon crediting determinations made annually based upon her salary, accrual was even earlier.

Plaintiff's allegation that she was improperly required, as a condition of transferring between pension programs in 1981, to make a pension contribution of some $2,500, is likewise time-barred. The limitation period as to that allegation lapsed no later than four months after plaintiff made the allegedly mandated contribution.

As to plaintiff's claim that the municipal defendants failed to fulfill their alleged obligation to grant plaintiff's pre-retirement requests for counselling concerning how to maximize her pension benefits, that allegation both fails to state a cause of action and is time-barred. The allegation states no cause of action, inasmuch as the municipal defendants had no duty to provide plaintiff with such counselling. Thus, for example, in Casatelli v. Ward, Index No. 11449/85 (Sup. Ct. , N.Y. Co., 9/18/85), aff'd, _____ AD2d ____ N.Y.L.J., 11/20/86, p.7, col.3 (1st Dept., 1986), a police officer alleged that his failure to comply with certain technical pension plan transfer restrictions, resulting in a diminution of benefits, was attributable to failure of the Police Department and the applicable pension fund to apprise him of these restrictions. Rejecting the allegation, Justice Wallach held: "Petitioner argues that it was respondents' duty correctly to advise him as to how to maximize his pension benefits...., and that in the absence of such advice..., respondents should now be estopped from asserting the law. Such a contention would be without merit even against a claim...that erroneous advice was given." Likewise, in Owens v. McGuire, 121 AD2d 292 (1st Dept., 1986), the Court held that a pension plan

member had no claim against a pension fund based upon an assertion that the member was not properly advised as to certain provisions that would, if he had employed in the past, have increased his benefits. See also Burns v. Regan, 87 AD2d 944 (3d Dept.), app. dsm'd, 57 NY2d 954 (1982).

In any event, the failure-to-counsel allegation is time-barred. Assuming, arguendo, that the municipal defendants had a duty to honor the demands for counselling that plaintiff allegedly made before her 1982 retirement, any causes of action relating thereto accrued at the time of such refusal(s) and became time-barred four months later -- long before the instant action was commenced. See CPLR 217.

With regard to plaintiff's allegations of conspiracy, no cause of action is stated. To begin, New York State does not recognize any cause of action for civil conspiracy. Freyne v. Xerox Corp., 98 AD2d 965 (4th Dept., 1983). In any event, even if such a cause of action were accepted in this state, plaintiff's complaint does not properly plead the elements of civil conspiracy. Nowhere in the complaint is there any reference to any meeting of the minds, preconceived common plan, or joint activity on the part of defendants, as is required in order to properly plead conspiracy. See Powell v. Jarvis, 460 F2d 551, 553 (2d Cir., 1972). On the contrary, plaintiff's position appears to be that the mere fact that an individual or entity fails to acknowledge the legitimacy of her complaints or acts to her disadvantage automatically renders that

individual or entity part of a conspiracy against her. Indeed, this is evident from the explanation of her conspiracy allegation that plaintiff made in connection with her federal court litigation. Thus, for example, in her brief to the United States Court of Appeals for the Second Circuit, she argued that the fact that none of the thirty-odd attorneys whom she consulted would accept her case indicates that they too were part of this conspiracy. Brief for Appellant at 15, Clissuras v. City of New York, No. 85-9002 (2d Cir. 1986). Similarly, in oral argument before Judge Jack Weinstein, she described the conspiracy as including, among others, the Social Security Administration and the Internal Revenue Service, which audited her tax returns several times. Appellant's Appendix at 362, Clissuras v. City of New York, No 85-9002 (2d Cir., 1986). Clearly, no conspiracy is sufficiently alleged. See San Filippo v. United States Trust Co., 737 F2d 246, 256 (2d Cir., 1984); Contemporary Mission, Inc. v. United States Postal Svc., 648 F2d 97, 107 (2d Cir., 1981).

Plaintiff's fraud allegations likewise state no cause of action against the municipal defendants. To begin with, plaintiff's allegations are conclusory, and fail to meet the statutory requirement that a fraud cause of action be pleaded "in detail." CPLR 3016(b); see Pope v. New York Property Ins. Underwriting Ass'n, 112 AD2d 984 (2d Dept.), aff'd, 66 NY2d 857 (1985). Moreover, plaintiff fails to establish all of the elements of fraud, such as, for example, scienter. See Weir Metropolitan Ambu-Service, Inc. v. Turner, 57

NY2d 911 (1982); Lyons v. Quandt, 91 AD2d 709 (3d Dept., 1982). Finally, plaintiff's allegations -- which consist essentially of the claim that the municipal defendants granted plaintiff pension benefits below those to which she is contractually and statutorily entitled -- state no cause of action that is independent of the one for miscalculation that plaintiff could properly have been pursued in an Article 78 proceeding in the nature of certiorari. Cf. Spellman v. Columbia Manicure Mfg. Co., 111 AD2d 320 (2d Dept., 1985) (no separate fraud cause of action stated where only "fraud" is that of breach of contract); Freyne v. Xerox Corp., 98 AD2d 965 (4th Dept., 1983) (same).

With regard to plaintiff's claim that the municipal defendants deprived plaintiff of procedural due process, that claim too was properly dismissed. Firstly, the claim is facially deficient, inasmuch as plaintiff was clearly accorded adequate procedural due process. Far from ignoring plaintiff's repeated complaints, the municipal defendants considered them at length, even going so far as to send her a 15-page memorandum explaining their invalidity and to hold a two-and-a-half-hour personal meeting with her, with the Chief Actuary in attendance. Furthermore, contrary to plaintiff's intimation, she had no right to a full evidentiary hearing. See Plaza Realty Investors v. New York City Conciliation and Appeals Bd., 110 AD2d 704 (2d Dept., 1985); cf. Basciano v. Herkommer, 605 F2d 605 (2d Cir.), cert. denied, 442 US 929 (1979). For, the risk of error in standard pension calculations is small, the probable value to a

pensioner of a full adversarial hearing regarding calculations is slim, and the burden upon the City of granting such a hearing to all who complain about computational errors would be enormous. See Matthews v. Eldridge, 424 US 319 (1976). Secondly, the claim is barred by collateral estoppel, since, in plaintiff's federal court action, Judge Jack Weinstein dismissed the identically-worded claim for failure to state a cause of action. See 175 East 74th Corp. v. Hartford Accident and Indem. Co., 51 NY2d 585, 590n.1 (1980). Thirdly, the claim is time-barred, since it could have been raised in an Article 78 proceeding and is hence subject to a four-month statute of limitations dating from the challenged determination. See Solnick v. Whalen, supra, 49 NY2d at 227 (four-month Article 78 statute of limitation applies to attack on administrative determination as invalid for lack of procedural due process).

As for plaintiff's allegation that the municipal defendants discriminated against her based upon her Greek Orthodox religion and based upon her sex in violation of section 296 of the Executive Law, that too was properly dismissed, for multiple reasons. To begin with, the allegation is entirely conclusory and hence states no cause of action. Thus, although plaintiff avers in her complaint that male and non-Greek Orthodox professors received certain benefits denied her, neither in her complaint nor elsewhere in her voluminous submissions does she make a genuine showing of sex-based or religion-based animus. Nowhere does she claim that any of defendants or their employees ever indicated any dislike for women or

for Greek Orthodox people. Nor does she claim that women as a class or Greek Orthodox practitioners as a class were subjected to the same supposed disadvantages as was she. On the contrary, she simply claims that a few acquaintances were treated more favorably. Nowhere does plaintiff explain the basis, if any, for her conclusion that this difference in treatment was not the result of differing individual circumstances or of mere inadvertence but rather was the result of sexual and religious bias. Even allowing for liberal pleading principles and for the limited indulgence due a pro se college professor with three semesters of law school education, the sufficiency of her discrimination claims is doubtful. See Morpurgo v. Board of Higher Educ., 423 F Supp 704, 711 (S.D.N.Y., 1976).

In any event, plaintiff's discrimination cause of action may not be maintained because of section 297(9) of the Executive Law. Pursuant to that section, no private cause of action may be maintained to redress discrimination in violation of section 296 of the Executive Law where an administrative discrimination charge was filed with the State Division of Human Rights, unless that agency has formally dismissed the charge for "administrative convenience." Exec. L. §297(9). Plaintiff concedes in her brief to this Court that an administrative discrimination charge was filed with the State Division of Human Rights in July of 1985. Br. App. at 19. Further, though plaintiff laments that the State Division has been lax in that "it has shown no signs of contacting all of the respondents and no signs of any investigation," she admits that the State Division charge is still

pending. Br. App. at 19. Accordingly, plaintiff is absolutely barred from asserting her discrimination claims in this action. See Koster v. Chase Manhattan Bank, 609 F Supp 1191, 1196 (S.D.N.Y., 1985) (filing of state administrative discrimination charge which has not been dismissed for administrative convenience bars cause of action predicated upon section 296, even if administrative agency has been "slothful"); Low v. Gibbs & Hill, 92 AD2d 467 (1st Dept., 1983).

Finally, at least with respect to the claim that the municipal defendants improperly compelled plaintiff to make a pension contribution when she transferred between pension plans in 1981 and also with respect to other of plaintiff's claims that accrued more than three years before plaintiff's August 27, 1985 commencement of this action (152), plaintiff's discrimination cause of action is time-barred under the 3-year statute of limitations that applies to causes of action based upon section 296. See Koerner v. State of New York, 62 NY2d 442 (1984).[7]

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[7] Contrary to plaintiff's assertion, the mere fact that an allegedly discriminatory determination made and concluded at a discrete point in time in the past may have lasting adverse consequences for a party (e.g., municipal defendants' allegedly discriminatory refusal to properly credit plaintiff's account when she transferred between pension plans in 1981) does not render that determination a continuing wrong. Indeed, as the Appellate Division-First Department has stated in rejecting the assertion that alleged discrimination in past salary increases and promotions constituted a continuing wrong because of continuing adverse impact:

> Plaintiff's assertion that Chemical's acts are continuing wrongs and as a result,

(Footnote Continued)

In sum, as demonstrated above, it is quite clear that, with respect to the municipal defendants, all elements of plaintiff's complaint were properly dismissed.[8] Accordingly, there should be an affirmance.

(Footnote Continued)

> the statute of limitations is tolled, is without merit. Her discrimination claims are not continuing wrongs, albeit that the impact of such alleged wrongs may continue. Simply because an act of discrimination may have a lasting effect, it cannot be seriously argued that the tort is a continuing wrong unaffected by any statute of limitations.

Patrowich v. Chemical Bank, 98 AD2d 318 (1st Dept., 1984), aff'd, 65 NY2d 541 (1984). The law, rather, is that a discrimination cause of action accrues when the discrimination is "first perpetrated and felt." Board of Educ. v. New York State Div. of Human Rights, 56 NY2d 257, 262 (1980). Indeed, any other notion would be inconsistent, for example, with the Court of Appeals' holding that a claim for discriminatory non-reappointment of a teacher accrues when the teacher is first advised that he will not be reappointed. Queensborough Comm. Coll. v. Board of Educ., 41 NY2d 926 (1977).

This is not to say, however, that a new cause of action does not accrue when a new discriminatory act in essence incorporates an old discriminatory act. Thus, for example, it has been held that the promulgation of a seniority system denying seniority credit for time when women employees were on compulsory pregnancy leaves constitutes an act of discrimination distinct from that involved in compelling the pregnancy leaves. Board of Educ. v. New York State Div. of Human Rts., supra; State Div. of Human Rts. v. Board of Educ., 112 AD2d 435 (2d Dept., 1985). Such a situation is to be distinguished, however, from that of a past discriminatory act that, though incorporated into no later separate discriminatory acts, nevertheless has continuing adverse impact.

[8] It is immaterial that, in part, we urge affirmance on grounds other than those relied upon by the lower court and other than those that we raised below, inasmuch as the grounds that we advocate are ones that could not have been contested if raised below. See Sega v. State of New York, 60 NY2d 183, 190 n. 2 (1983).

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD BE AFFIRMED, WITH COSTS, INSOFAR AS IT PERTAINS TO THE MUNICIPAL RESPONDENTS.

January 26, 1987.

Respectfully submitted,

DORON GOPSTEIN,
Acting Corporation Counsel,
Attorney for Municipal
Respondents.

FRANCIS F. CAPUTO,
MICHAEL S. ADLER,
of Counsel.

PLAINTIFF-APPELLANT'S REPLY BRIEF TO
CITY DEFENDANTS-RESPONDENTS
(PP. 841-861)

To be argued by
ALICE CLISSURAS
60 Minutes Requested

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

PLAINTIFF-APPELLANT'S REPLY BRIEF RESPONDING TO BRIEF FOR CITY DEFENDANTS-RESPONDENTS

ALICE CLISSURAS
Plaintiff-Appellant, pro se
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KINGS COUNTY CLERK'S INDEX NO. 20522/85

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- x

PLAINTIFF-APPELLANT REPLY BRIEF RESPONDING TO BRIEF FOR CITY DEFENDANTS-RESPONDENTS

PRELIMINARY STATEMENT

Plaintiff-appellant submits this reply brief to respond to the brief of the City defendants-respondents (City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York).

Plaintiff is appealing three orders of the Supreme Court of the State of New York, County of Kings, by which order the Court dismissed the complaint as against all of the defendants herein. The orders were consolidated for purposes of this appeal and the appeal has been calendared for the January, 1987 term. On December 24, 1986, plaintiff-appellant served and

filed reply brief responding to the briefs of all defendants-respondents, with the exception of the City defendants-respondents. Since the brief of the City defendants-respondents was served on plaintiff on January 26, 1987, plaintiff, in this paper, is responding to said City defendants-respondents. However, in the interests of justice and understanding, this reply brief should be joined to the December 24, 1986, reply brief.

The brief of the City defendants-respondents was submitted by Doron Gopstein, Acting Corporation Counsel of the City of New York, attorney for City defendants-respondents; by Francis J. Caputo and Michael S. Adler, Assistant Corporation Counsels, of Counsel.

Plaintiff-appellant is representing herself in this action due to the refusal of over 30 attorneys to represent her. Plaintiff is not an attorney; due to the exigencies of this action, plaintiff enrolled in law school.

RESPONSES TO BRIEF

A. RESPONSES JOINING ALL BRIEFS

Plaintiff respectfully refers the Court to pp. 2-6 of the December 24, 1986, Reply Brief, in which plaintiff sets forth the failure of the defendants to respond to the causes of action herein; namely, discrimination, fraud, concealment of causes of action, conspiracy, deprivation of Constitutional rights, and breach of contractual and fiduciary obligations.

Attorneys Caputo and Adler, attorneys for City defendants-respondents, do not mention, do not set forth a response to, and do not controvert in any manner plaintiff-appellant's focal claim that her pension was calculated discriminatorily and fraudulently according to the New York State Career Pension Plan at the rate of 2½% for 29 years in the plac and stead of 2½% for 34 years with a 30-year entitlement.

Attorneys Caputo and Adler do not mention, do not set forth a response to, and do not controvert in any manner plaint appellant's claim that her service was credited discriminatoril and fraudulently whereby five years of plaintiff's City service was charged as "outside service" in violation of New York State Pension Laws and whereby the five years were not thereafter included in the pension calculation.

The attorneys do not show in any manner, by argument or by proof, that plaintiff knew prior to July, 1985, that her pension was fraudulently and discriminatorily a 29-year pension instead of a 34-year pension for the years she served. Plainti documents this discovery (Rec. on Ap., p. 570) and she document the five fraudulent versions of her pension which she received from defendants prior to July, 1985, in their attempts to deceive plaintiff and conceal the use of 29 years for the pensi amount (Rec. on Ap., pp. 213-215, 501, 608).

The attorneys do not mention what the amount of the pension should be; the attorneys do not mention how service should be credited according to law. They continue the conceal ment of the causes of action. They continue the concealment

of fraud. The attorneys use the same tactics as the defendants. They make statements without any specificity. They have not submitted any documentation or proof to controvert plaintiff's claims. All of the attorneys herein have submitted briefs in which no one states the pension amount and the law for crediting service. The pension was arrived at fraudulently and the service was credited fraudulently. At the very least, these are issues of fact which the Court below improperly dismissed without stating what was being dismissed and without requiring a trial for said issues of fact as Constitutionally required.

The attorneys do not mention plaintiff's third area of causes of action; namely, the improper maintenance of plaintiff's accounts. In addition to the fraud therein, the manner in which they were maintained constitutes gross negligence in the case of the fiduciary defendants.

The attorneys do not mention plaintiff's fourth area of causes of action; namely, deprivation of rights. They make no mention of defendants' failure to provide correct answers to pension questions, failure to provide equal protection of the laws, failure to disseminate information widely to the large group of similarly situated persons, failure to account for plaintiff's pension moneys, failure to include plaintiff's employment and pension service in computer, failure to provide copy of plaintiff's records, failure to allow plaintiff to see her records, failure to explain the use of two pension numbers and two retirement dates for plaintiff, failure to allow a due process hearing, and failure to respond to all the claims herein.

The attorneys do not respond to plaintiff's claims; they make many misstatements of facts and omit many facts, whic misstatements and omissions are set forth below in detail; and they continue the concealment of the causes of action herein. The Court below did not require the attorneys to respond, did not consider the documented fraud by which all of plaintiff's causes of action were established, and improperly dismissed issues of fact.

B. -RESPONSES TO BRIEF OF CITY DEFENDANTS-RESPONDENTS

The brief submitted by Attorneys Caputo and Adler is so full of misstatements, errors, misinterpretations, and omissions that it is difficult to respond to all of such state ments adequately due to the volume.

In the FACTS summary (Res.Br.,* p. 4, 1st ¶), the attorneys omit date on which plaintiff started her employment the College and the number of years she served. They describe her employment as, "She served for many years . . . ." Did th attorneys find a starting date of September 1, 1948, on the records of the City defendants? Plaintiff is not allowed to s the records and, therefore, does not know the extent of her se vice on said records. Over the years various Pension System employees have informed plaintiff of gaps in her service. Upo informing them that she had continuous service with no gaps,

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*Reference is to page or pages of Brief for City Defendants-Respondents.

she was assured that appropriate corrections would be made. Since the College refuses to give plaintiff a copy of her record, it is difficult to determine the extent of the misinformation from that source. However, an example of such misinformation is found on page 550 of the Record on Appeal, in which the College misstated plaintiff's appointment to Assistant Professor by five years in a letter to the Pension System. There is no evidence that there has been a correction of this. In fact, this misstatement appears to conform with the deprivation of five years of service in the pension calculation.

The attorneys continue on page 4 of their brief to a summary ofthe action of the Retirement Board. The Board approved the pension amount at its January 20, 1983, monthly meeting (Rec. on App., p. 213). Plaintiff questions this approval since the Report of Actuary indicates that payment should begin after such approval. Plaintiff should have received a January 31, 1983, check as the first check. Instead she received a December 31, 1982, check as the first check.

Further on page 4, the attorneys state in effect that since plaintiff complained to the Pension System that a greater allowance was due her, the System's Chief Actuary responded with a detailed explanation. This is not true. Plaintiff received her first check with no accounting, no statement, and no explanation of the amount which was an amount which included retroactivity to September 1, 1982. Plaintiff waited for information to no avail. After about two weeks, plaintiff went to the Pension System for information, not to complain about a greater allowance

due her. At that point, she was handed the Report of Actuary and since the Report was undecipherable to plaintiff as to the pension, she sought information which would clarify the figure Also, there were errors and omissions therein; i.e., incorrect pension member number and provision for "outside service." In response to plaintiff's questions, she was referred to at leas three people who not only indicated they could not answer but all made it clear they would not answer. Due to this unwillin ness, plaintiff was referred to the Executive Director of the Pension System who then referred her to the Pension System's Chief Actuary, since, as he stated, the figures were those of the Actuary. The Chief Actuary informed plaintiff that he wou send her an explanation of the pension amount.

Plaintiff was seeking information as to the first ch She did not have knowledge of the computation to challenge it that point; she did not know of the use of 29 years for her 34 years of service; and she did not know that the five years of "outside service" were not included in the calculation. All o this was and is continuing to be concealed by each and every defendant and each and every attorney herein. It took over tw years to overcome the obstructions of the defendants in plaint search for pension information and answers. (Rec. on Ap., pp. 73, 206-207, 279-280.)

The attorneys continue on their page 4 to a summary Chief Actuary's explanation of the method of calculation. The summary refers to 2.5 years of outside service and a deficit resulting from a loan. Are the attorneys agreeing with the

use of outside service for plaintiff as evidenced by their reliance on the Actuary's letter? Are the attorneys not aware of the New York State Pension Law for crediting prior service, as that Law is imprinted on the forms of the Retirement System, as follows:

"PRIOR SERVICE:

"You are entitled to immediate credit for prior service as follows:

"* * *.

"(b) If it was rendered during which employment you became a member of this System.

"(c) Service credit that was transferred from any public retirement system in New York City or New York State."

In August of 1981, the Pension System evaluated plaintiff's service as, in effect, 34 years of New York City Service (Rec. on Ap., p. 216). The defendants do not respond to the Law cited above and the Service Certification.

Are the attorneys agreeing with the deficit which was set forth in the Chief Actuary's letter as to plaintiff's Annuity Savings Fund? In the Report of Actuary, the Chief Actuary sets forth a pension payment for the amount in plaintiff's Annuity Reserve Fund which clearly did not have a deficit. The defendants do not mention the Report of Actuary.

Are the attorneys agreeing with the Chief Actuary's use of pension for ITHP after 20 years of Career Pension Plan service? In the Report of Actuary, the Chief Actuary provides for ITHP pension based on the entire amount in plaintiff's ITHP accumulation. The defendants do not mention the Report of Actuary.

Are the attorneys agreeing that the Chief Actuary's explanation of the pension calculation is the formula according to the Career Pension Plan? It appears that the Chief Actuary used the formula in §B20-41.2 of the Administrative Code of the City of New York, the use of which is a sham and fraudulent.

Are the attorneys agreeing with the Chief Actuary that there is no provision for a 30-year plus retirement allowance according to the provisions of the Career Pension Plan?

The attorneys do not mention the third version of the pension which was provided by the Executive Director of the Pension System (Rec. on Ap., p. 215) which includes such errors as an amount for minimum accumulation based on the amount required for members with less than 20 years of service, notwithstanding the fact that there is no reduction of pension for the minimum calculation in the Career Pension Plan.

Did the attorneys include a summary of the Chief Actuary's letter as documentation of the accuracy of the pension calculation? Is their source of the pension calculation the February 7, 1983, letter of the Chief Actuary? The Chief Actuary did not respond to plaintiff's questions regarding the explanations in his letter. The Executive Director stated this in his May 30, 1984, letter to plaintiff (Rec. on Ap., p. 272, 1st ¶). How would the attorneys herein respond to plaintiff's above questions, to which no one has responded to date?

The attorneys herein follow the tactics of the defendants: they make statements without supporting the statements in any way. The defendants have not submitted one piece of

documentation to support their position for dismissal of plaintiff's claims.

There are so many misstatements in the City defendants-respondents' brief that replying to each would require great lengths. To avoid extending this reply unduly plaintiff will attempt to set forth the misstatements without due clarification as a means of bringing them to the attention of this Court.

The attorneys improperly summarize the events as to attorney retained by the Union and plaintiff (Res.Br., p. 5, 1st ¶) For a firsthand summary see Rec. on Ap., pp. 458-460, 473-474. What were the "discussions" to which the attorneys refer on their page 5? How was plaintiff unco-operative? The attorneys have no firsthand knowledge of what transpired.

The attorneys incorrectly summarize the events which involved the Teachers' Retirement Board (Res.Br., p. 5, 2d ¶). For a firsthand summary see Rec. on Ap., pp. 280, 266-270. The attorneys refer to page 187 of the Record as support for the statement that the Board advised plaintiff that the Executive Director of the Pension System would respond to plaintiff's memorandum to the Board. On page 187, plaintiff clearly states that the Board advised plaintiff that it would respond. The December 14, 1983, letter of the Director was not a response for the Board; it was a response to a letter to the Director (Rec. on Ap., p. 266). By way of important note, the correspondence on pages 220--273 of the Record clearly shows that plaintiff had no knowledge of the fraudulent deprivation of five years in her pension and of the correct pension plan, among other items, at that point in time.

The attorneys incorrectly summarize the events as to the March 28, 1984 meeting with the Directors and Actuary of the Pension System (Res.Br., p. 6). All of plaintiff's complaints were not discussed and explanations were not provided. The Executive Director cautioned the others not to provide more than a "yes" or "no" answer to plaintiff's questions. Since all the questions were not answered, plaintiff requested written explanations. It was apparent that the meeting which plaintiff requested was not to be a good faith meeting on the part of the Pension System. The May 30, 1984, letter which the attorneys state complied with the explanations indicates clearly that all questions were not answered (Rec. on Ap., p. 414) and these questions have not been answered to date. In said letter the Executive Director stated that plaintiff was shown records to prove that she was not a member of the State Pension System, in response to her question (Rec. on Ap., p. 415, No. 19). Plaintiff was not shown such records at the meeting. Plaintiff mailed proof of membership in the State System to the Pension System (Rec. on App., p. 217), which the Pension System continues to ignore, fraudulently.

In their summary of the events involving the State Insurance Department, the attorneys distort what occurred by virtue of omission of material events. Plaintiff presents a clear account of the complete correspondence with the Insurance Department on pp. 333-336 of the Record. The Insurance Department has not responded to plaintiff's claims as presented in her

April 5, 1984, letter, to date. In the quotation of the Department's August 29, 1984, letter, which the attorneys set forth in their p. 6, the Department refers to a "detailed review." There is no evidence of said review. Have the attorneys seen any evidence of it? The quotation continues and includes a statement to the effect that complete and correct answers have been furnished to all of the questions raised. It appears that with that statement, the Insurance Department joined the conspiracy to conceal the causes of action herein. There is absolutely no indication where the complete and correct answers are to be found. Then, the attorneys refer to the March 27, 1986, letter of the Pension System to show that the calculations were correct and all questions had been answered (Rec. on Ap., p. 274). How do the Pension System and the attorneys explain the use of "outside service" for plaintiff in violation of the Law quoted above on page 8 herein? How does the Pension System explain not following this Law which is imprinted on its forms? The attorneys refer to the January 31, 1985, letter of the Insurance Department again to show that the calculations were correct and all questions had been answered (Rec. on Ap., pp. 397-398). One reading of the second answer in that letter shows that the Department ignored plaintiff's proof of membership in the State System, which proof plaintiff mailed to the Department on April 30, 1984 (Rec. on Ap., pp. 373-374); that the Department concealed the State Law for prior service; and that the Department ignored the Pension System's certification of plaintiff's 34 years of service as City Service (Rec. on Ap., p. 347). The attorneys refer to the

June 7, 1985, letter of the Insurance Department again to show that the calculations were correct and all questions had been answered (Rec. on Ap., p. 405). It would be appropriate for the defendants and the attorneys to show the correctness of the calculations and the answers to all questions. These letters show that plaintiff's claims of discrimination and fraud continued to June 7, 1985; that the defendants concealed the causes of action to that date; and that the defendants conspired to conceal the causes of action to plaintiff's damage.

The defendants do not document in any manner their generalizations that everything has been calculated correctly and all questions have been answered. They ignore plaintiff's documentation and persist in the discrimination and fraud. It should be a simple matter for the defendants and attorneys to state the Laws according to which everything was calculated correctly.

On their page 7, the attorneys, in FACTS (2), briefly refer to the events involving the EEOC and the SDHR. Neither agency showed any evidence of investigation of plaintiff's claims; neither agency conducted a hearing. The State Division waived its jurisdiction over the matter and the EEOC then issued a right to sue letter.

On their page 8, the attorneys, in FACTS (3), summarize plaintiff's four areas of causes of action and in the process grossly omit substantial claims. The first cause of action which is set forth in the complaint is that plaintiff's pension was not calculated for her 34 years of service; that the defendants concealed the Pension Law providing for a 30-year entitlement for

30-plus years of service; and that the defendants would not give plaintiff any and/or correct pension information. Plaintiff was not seeking counseling before retirement concerning how to maximize benefits, as the attorneys state on their page 8. Plaintiff was seeking information. She discovered well after retirement that males and/or non-Christians were counseled and directed concerning how to maximize their benefits. As to the second cause of action, the complaint clearly sets forth that plaintiff claims that her pension is a 29-year pension in the place and stead of a 34-year pension in reckless disregard of the law on the part of defendants (Rec. on Ap., p. 82, 2d ¶). The attorneys do not state this in any form. Not only do they misstate the second cause of action, they also falsely state that plaintiff transferred between retirement systems in 1981. Plaintiff transferred in 1968. The Pension System did not evaluate her service until 1981, despite the fact that by law this is to be done within 4 years after entry into the system. The third cause of action is stated properly on page 8; namely, the Pension System's failure to maintain plaintiff's statements of accounts properly. As to the fourth cause of action, the deprivation of plaintiff's rights, the attorneys reduce it on their page 8 to insufficient responses. The attorneys totally disregard plaintiff's claims of deprivations of Constitutional rights of due process, the right to counsel, and the right of equal protection of the laws. In addition, plaintiff was deprived of the right to her records, the right to correct information from the defendants who are in a fiduciary relationship with plaintiff, the right to an accounting of her moneys, and the right

to equitable and fair treatment (Rec. on Ap., pp. 87-101). As to the claims in the complaint which constitute the fourth cause of action, reducing them to insufficient responses constitutes a gross misstatement. Is this the method by which the attorneys justify their not responding to the deprivation of rights?

In FACTS (4), on page 8 of the brief, the attorneys summarize the status of plaintiff's action in the Federal courts. The Federal action is being argued and to begin to involve it in this action is an impossible task; the attorneys omit material aspects of the Federal action which require lengthy and detailed explanations.

In FACTS (5), on page 8 of the brief, the attorneys summarize the three decisions issued in the Court below. Plaintiff presents arguments in great detail as to the three decisions on pages 22-28 of her brief, to which the plaintiff respectfully directs this Court. The Courts below totally disregarded plaintiff's claims and documentation of defendants' concealment of the causes of action, defendants' fraud, defendants' conspiracy to defraud, and defendants' deprivations of plaintiff's rights as protected by the Constitution and by laws. The Courts below improperly dismissed issues of fact without a trial. Defendant Rosenberg served his answer, which pleading joined issues of fact. All of the defendants used affidavits to support their motions for dismissal, which affidavits joined issues of fact. Plaintiff sets forth the facts in great detail in all papers, including this one, due to the volume of facts which are in dispute. Not one of the orders below states that plaintiff's action is required to be brought as an Article 78. The ruling of time bar based on

the applicable four-month limitation is not explained in any order. Judge Hurowitz would not explain it on the record (Rec. on Ap., p. 64). The Judges also would not respond to plaintiff's claims of fraud, which claims were documented.

As to the Argument of the attorneys which begins on page 11 of their brief, plaintiff respectfully refers to her Argument on pages 28-48 of her brief which plaintiff reiterates as though presented here in rebuttal to the Argument of the attorneys.

Not one Judge has stated that plaintiff is required to bring her action as an Article 78 proceeding.

Discovery is vital to plaintiff's action. That fact alone points up the inapplicability of the Article 78 to plaintiff's actions.

Plaintiff has not been allowed the right to amend her pleading should the Court have deemed the complaint insufficient.

The attorneys' Argument fails due to the fact that nowhere do the attorneys respond to the calculation of pension for 29 years instead of 34 years; nowhere do the attorneys argue or respond to the violation of the Law providing for prior service. The attorneys do not consider when plaintiff learned the facts of these fraudulent acts. All of plaintiff's papers show clearly that plaintiff was not aware that her pension was a 29-year pension until July of 1985. All of the defendants concealed this and continue so to do. All of the attorneys conceal this and continue so to do. Are the Judges and the attorneys holding and arguing that those two acts of concealed fraud are

limited by a four-month statute of limitation?

The Judges and the attorneys fail to take into account the fact that the discriminatory and fraudulent policy against plaintiff on the basis of her sex and religion continues unabated. Plaintiff knows males and/or non-Christians who received the appropriate benefits after plaintiff's case and this is continuing to date.

The attorneys argue on page 13 of their brief that a claim of failure to advise is without merit even where the advice given is erroneous. Plaintiff's claim is not one of erroneous advice. Plaintiff was seeking information and answers to questions. She was the receiver of fraudulent statements, concealments, abuses, and deprivations. The College fraudulently informed plaintiff that she could not "purchase" the first five years of her City service. This continued from 1968 to 1981 when the Pension System fraudulently informed plaintiff that she was required to purchase the first five years as "outside service". Plaintiff had no information on which to challenge these statements. Fiduciaries were informing her of the requirements. It was not until long after retirement that plaintiff discovered that males and/or non-Christians did not have to purchase their early years at the College and that they were credited for the years even in the instances when they did not contribute to a Pension System. This discrimination has not ended and there is no four-month limitation to such claims.

As to plaintiff's claim of conspiracy, the attorneys argue on their page 14 that plaintiff's position seems to be that

the failure of a party to acknowledge the legitimacy of plaintiff's claims or acts to her disadvantage renders that party as a conspirator against her. Plaintiff based the conspiracy claim on the fact that each and every defendant concealed all of the causes of action herein. The attorneys do not give a non-conspiratorial response to the concealment. Are the attorneys claiming that the fiduciary-defendants did not know the pension calculation for a 34-year pension; further did they not know the Law for crediting prior service? The only explanation is a conspiracy to defraud. How do the attorneys explain the refusal of over 30 attorneys to represent plaintiff? As to the Internal Revenue Service, plaintiff has been audited over 12 times since 1968. The attorneys refer to this as "several times," on their page 15. Plaintiff was informed by one of the many auditors that it appeared that someone was harassing her. The attorneys do not offer any alternative explanations. The essence of a claim of conspiracy is to join the defendants to the acts of each other which is a basis on which the defendants herein become responsible for plaintiff's causes of action.

As to the attorneys' arguments on due process which begin on their page 16, plaintiff explained above the fact that the 2½ hour meeting was not conducted in good faith which is a requirement of due process; plaintiff did not intimate that she had a right to a full evidentiary hearing.

As to the attorneys' arguments on discrimination on their page 17, plaintiff has set forth in many of her papers that plaintiff discovered that she was being discriminated

against on the basis of her sex and religion when she found that those who were receiving their benefits differed only as to sex and religion. Plaintiff did not claim discrimination against Greek Orthodox individuals; the discrimination is against female and Christian. The individuals whom plaintiff identified in this manner are individuals who are similarly situated as to plaintiff with the exception of sex and religion. The defendants who are responsible for disseminating information do not disseminate information widely to the large group of similarly situated individuals. Instead they disseminate the information on an individual basis which leads to invidious discrimination and the situation in which plaintiff finds herself. The attorneys do not explain why the 3-year statute of limitations for discrimination bars the discriminatory computation of plaintiff's pension claim.

CONCLUSIONS

Plaintiff respectfully refers this Court to the Conclusions found on page 16 of her reply brief which was served December 24, 1986. The conclusions set forth in the earlier reply brief are reiterated here as though fully set forth here.

Dated, February 2d, 1987.

Respectfully submitted,

ALICE CLISSURAS
Plaintiff-Appellant, pro se

PLAINTIFF-APPELLANT'S ORAL ARGUMENT ON APPEAL TO APP. DIV. (PP. 862-871)

APPELLATE DIVISION : SECOND DEPARTMENT

ORAL ARGUMENT

THURSDAY, MARCH 5, 1987

PRESIDING JUSTICE BRACKEN

JUSTICE LAWRENCE

JUSTICE KUNZEMAN

JUSTICE SPATT

My name is Alice Clissuras, I am the plaintiff-appellant pro se. I am representing myself in this action due to the refusal of over thirty attorneys to represent me.

This statement is being read by me for purposes of the record and its accuracy. It is not being read in order to bar questions and interruptions. In deference to justice in this matter, your Honors' questions and interruptions are welcomed by this plaintiff-appellant.

In a thirty-three page complaint, I set forth in special detail the facts for establishment of the claims and causes of action herein which I bring against the nine named defendants herein. The defendants have four legal representations. The Corporation Counsel of the City of New York represents the Pension System and the City Defendants. The Attorney General of the State of New York represents the Board of Higher Education and the College. The Union is represented by its counsel. And Defendant Attorney Rosenberg is represented by private counsel.

Read Cover page

Plaintiff's claims in this action are:

1) EMPLOYMENT DISCRIMINATION

2) FRAUD

3) CONCEALMENT OF CAUSES OF ACTION

4) CONSPIRACY

5) DEPRIVATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS-- RIGHT TO EQUAL PROTECTION OF LAWS, RIGHT TO DUE PROCESS, RIGHT TO COUNSEL, AND RIGHT TO TRIAL BY JURY

6) DEFENDANTS' BREACH OF THEIR CONTRACTUAL AND FIDUCIARY DUTIES

7) DEFENDANTS' GROSS NEGLIGENCE

8) ABUSE OF PLAINTIFF'S PERSON, RIGHTS, AND PROPERTY

9) EXTRAORDINARY MEASURES USED BY DEFENDANTS TO PREVENT PLAINTIFF FROM RETAINING LEGAL COUNSEL AND GAINING PENSION AND LEGAL INFORMATION

10) EXTRAORDINARY TACTICS USED BY DEFENDANTS TO PREVENT DISCOVERY OF THE CAUSES OF ACTION, TO CAUSE DELAY, AND TO CAUSE EXPIRATION OF TIME.

Each and every one of the ten claims is established by the facts set forth in the complaint.

Each and every one of the ten claims is documented by the plaintiff in the 656-page Record on Appeal.

Not one of the ten claims has been answered or controverted by defendants.

Defendants have not presented any documentation to controvert any one of the ten claims.

Read entire page ✓

Defendants state plaintiff's claims improperly and inaccurately throughout in their papers. It appears that this is done to avoid responding to the claims.

For example, the basic claim which plaintiff makes is that her pension was discriminatorily and fraudulently calculated for 29 years in the place and stead of the 34 years which she served. Also, plaintiff's prior service was discriminatorily and fraudulently credited as "outside service" in the place and stead of her City service. Moreover, the years were not included in the pension calculation. Not one defendant responds to these claims which were set forth in the complaint and which were documented in the Record on Appeal. By avoiding these claims the defendants avoid responding to the discrimination and fraud on which the claims were founded.

The improper crediting of plaintiff's prior service violates the Retirement and Social Security Section of the CPLR Education Law. This was done fraudulently and discriminatorily as the papers which required that this service be purchased show. With respect to the fraud, it appears that the Code of Professional Responsibility has been violated. With respect to the fraud, it appears from their failure to respond that the Attorney General and the Corporation Counsel have not fulfilled the responsibilities of their respective offices.

Plaintiff received her first pension check on or about January 2, 1983, the amount of which was discriminatory and fraudulent. At that time, due to defendants' concealment, plaintiff was not aware of the discrimination and fraud. Recovery for damages for an unlawful discriminatory practice under subdivision 9 of Section 297 of the Executive Law is governed by the three-year Statute of Limitations

✓ Read entire page

set forth in CPLR 214, Subdivision 2, according to which plaintiff's discrimination claim is not time barred since this action was commenced on August 27, 1985. Plaintiff's claim of discrimination is not time barred under the three-year Statute even without taking in account that discovery of the discrimination occurred long after 1983.

An action based on fraud must be commenced within six years under Section 213 of the CPLR, according to which plaintiff's claim of fraud is not time barred. The fraud claim is not time barred even without taking into account that discovery of the fraud occurred long after 1983 due to defendants' concealment. Moreover, it is the rule in New York that a defendant, based on equitable estoppel, may be barred from invoking the Statute of Limitations as against a cause of action for breach of fiduciary relations in an action in which fraud, misrepresentations or deception are involved, as in the instant case. The New York Courts have so decided in countless decisions. Simcuski v. Saeli, 44 N.Y.2d 442 is illustrative of such decision.

The essence of a civil conspiracy is a combination to defraud plaintiff. A general allegation of fraud is sufficient. Conn v. Bryce, 170 N.Y.S. 95, is illustrative of such Court holding. In the instant case, each and every defendant has concealed and continues to conceal the causes of action herein. This could only have occurred by virtue of a conspiracy on the part of defendants to deprive plainti of the employment and pension benefits to which she is entitled.

The essence of the right to equal protection of the laws under Article 1, Section 11 of the New York State Bill of Rights, is that all persons be treated alike under like circumstances and conditi Unjustified discrimination violates the Constitution when certain individuals of a class are treated differently as opposed to others

Entire pa

of the same class. Scime v. County Legislature of Erie County, 395 N.Y.S.2d 952, is illustrative of the many Court holdings which proscribe denial of equal protection of the laws to all members of a group. In the instant case, plaintiff's pension and prior service were not determined according to law as were the pension and prior service of similarly situated teachers. The defendants practice this discrimination by imparting information individually to members of a large group. Even forms are distributed on an individual basis. The law for crediting prior service is imprinted on the application form of the Pension System. However, plaintiff was not given the correct form for such application which deprived her of the material information for gaining credit for prior service and which constitutes a fraudulent concealment on the part of defendants.

The foregoing claims and their viability according to the appropriate section of the Statute of Limitations are set forth as illustrations of the many claims and causes in this action, of the many issues of fact in this action, and of the many discriminatory and fraudulent acts of defendants.

There is no evidence of due process having been accorded in this action. To date, there has not been a hearing of this matter at any level. To date, plaintiff has not been given an accounting of her pension moneys. To date, plaintiff has not been given a copy of her records, as to which plaintiff has documented false information found on parts of such records concerning plaintiff's salary, service, and funds.

Erie pl

Plaintiff was deprived of her constitutional right of due process and right to trial by jury by the three orders of the Supreme Court, Kings County, which dismissed the complaint as against all of the defendants.

The orders do not respond to the ten claims which plaintiff enumerated at the beginning of this statement. The orders do not state the grounds for dismissal and do not set forth reasons or opinions.

By failing to respond, the Supreme Court Justices Shaw, Bernstein, and Hurowitz, prevent plaintiff from perfecting her appeal.

In his order, Judge Shaw does not state the nature of the action; he does not mention one cause of action; he concludes the order by stating that plaintiff's causes of action are barred by the four-month statute of limitations and the complaint is dismissed.

What does this mean? Is Judge Shaw implying or inferring that plaintiff's claims of discrimination, fraud, conspiracy, deprivation of Constitutional rights and breach of duties are all barred by the four-month statute of limitations? What is the four-month statute of limitations? What is the date of accrual? What is the event or transaction for determining accrual? Why is the four-month statute of limitations applicable to all of or any of plaintiff's claims? By this order, the many issues of fact in this action were improperly dismissed without any inquiry. Defendants' failures to respond to the issues were not considered by Judge Shaw. Defendants' fraud, misrepresentations, and concealments were not considered by the Court. Is the inference here that fraud is barred by a 4-month time limitation? Is justice served by the dismissal of a 33-page complaint containing a great many issues of fact with one quick stateme

— was stopped +/or interrupted after 1st ¶

which does not relate to the causes of action herein.

The order of Judge Hurowitz is totally devoid of the nature of the case and claims; it does not state the grounds for dismissal; it does not state the reasons for dismissal; and it does not set forth an opinion. This order merely states that the motion to dismiss is granted. No reason is given. This order deprives plaintiff of Constitutional rights of due process, of her right to a trial by jury of the issues of fact herein, and of her right to perfect an appeal. Insufficient consideration was given by the Court to the claims in this matter since the decision to dismiss was made at the end of the Special Term hearing at which the motion papers were submitted to the Court.

The order of Judge Bernstein mentions that the causes of action against Defendant Rosenberg are concealment, conspiracy, and breach of contract and fiduciary duty. However, he concludes by stating that plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages.

Plaintiff does not understand the import of the conclusion of Judge Bernstein. Defendant Rosenberg joined the conspiracy after plaintiff's retirement. The effect of conspiracy is to make each participant liable for the acts of each member of the conspiracy. Defendant Rosenberg concealed the claims herein and concealed plaintiff's legal rights. In addition to the fiduciary breach, he unilaterally withdrew his representation of plaintiff's case which was a breach of contract. Judge Bernstein did not respond to any of these claims. Moreover, Defendant Rosenberg joined the issues of fact in this action by service of his answer. The Court dismissed

x did not read

the issues of fact without a trial. The grounds on which Judge Bernstein dismissed the complaint are not clear. The claims against Defendant Rosenberg are set forth in the complaint. Is Judge Bernstein dismissing the complaint for failure to state a claim? The plaintiff, by this order, again is prevented from perfecting an appeal.

The New York Courts hold that the correct approach for dismissal is, initially, the sole criterion of whether the pleading states a cause of action and if from its four corners factual allegati are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail. This opinion was set forth in Guggenheimer v. Ginzberg, 43 N.Y.2d 268, for not granting dismissal for failure to state a claim.

No Court has dismissed plaintiff's claims of discrimination, fraud, concealment, deprivation of Constitutional rights, and breach of duties.

No Court has stated that plaintiff's action must be brought as an Article 78 proceeding.

No pre-trial or pre-hearing conferences have been held.

No discovery has been allowed.

No amendment of pleading has been indicated.

The Courts and the defendants do not respond to the claims herein.

Defendants' acts of discrimination, concealment, fraud, and conspiracy continue unabated. The decision in Melani v. Board of Higher Education established discrimination against females by City University and enjoined the defendant from discriminating against women. However, the discrimination continues.

In Melani, there was no consideration of a four-month Statute of Limitations; nor, any other limitation since the discrimination was a continuing one.

Further, as to the Statute of Limitations, the Courts and the defendants do not respond to the respondents' refusal to perform their duty, which refusal according to Section 217 of the CPLR is one of the dates for accrual of commencement of the action. The defendant Pension System refused to perform its duty on March 27, 1985, as evidenced by the letter from the Director of the System as of that date; the defendant Insurance Department refused to perform its duty on June 7, 1985, as evidenced by the letter from the Chief of the Life Insurance Bureau as of that date. The defendant City University refused to perform its duty on July 17, 1985, as evidenced by its communication of that date. All of these refusals are within the four-month limitation requirement of Section 217 even without considering the fraud included in the refusals and the effect of fraud on the Statute of Limitations and even without considering that the discrimination and fraud are continuing.

In view of the failure of the Courts to respond to the claims in the complaint and the failure to give sufficient consideration to the complaint, plaintiff hereby motions this Court to order the Court below to consider the causes of action and to take the appropriate judicial steps for such consideration and to allow plaintiff her Constitutional right to a trial by jury.

Moreover, as a second motion, plaintiff requests that this Court order the defendants to respond to the claims herein.

There are matters of justice and rights that are not being addressed here. The applicable law in this case

has been misrepresented or disregarded by the parties herein.

The facts herein have been misrepresented or disregarded by the parties herein.

And the responses appear to be bad faith responses.

It does not appear that the defenses have been investigated for factual and legal validity.

It appears by the total lack of response that no one is concerned that a claimant cannot retain legal counsel. And after this fact, tactics are used to take advantage of the absence of counsel.

The above statement is not intended as an all inclusive statement of the claims in this action. Unfortunately, the foregoing statement is but a small sample of the claims.

Plaintiff-appellant requests that this Court reverse the three Orders of the Kings County Supreme Court and order a trial by jury of the issues herein as Constitutionally protected.

I respectfully request the right to briefly rebut the arguments of the opposing attorneys should that be necessary.

(NOTE: ON THE BASIS OF PLAINTIFF'S RECOLLECTIONS, THIS PAPER WAS READ AS THE ORAL ARGUMENT ON APPEAL, IN THE MAIN, AS INDICATED BY THE CHECKMARKS. THE X'S INDICATE THOSE ¶S NOT READ.)

PLAINTIFF-APPELLANT'S LETTER TO APP. DIV.
RE SDHR DEFERRAL AND EEOC RIGHT TO SUE (PP. 872-874)

March 16, 1987

Supreme Court of the State of New York
Appellate Division : Second Department
45 Monroe Place
Brooklyn, NY 11201

Dear Justices Bracken, Lawrence, Kunzeman, and Spatt:

Re: Clissuras v. City of New York, et al. Nos. 3774, 3775, 3776

As plaintiff-appellant pro se, I represented myself on March 5, 1987, the day on which argument was heard in the above-entitled action.

One of the questions which was put to me concerned the status of my claim with the New York State Division of Human Rights. I responded that the State Division had waived its jurisdiction and that I then received a Notice of Right to Sue from the Equal Employment Opportunity Commission.

Since the two letters which document the waiver and the right to sue were not included in the Record on Appeal, I was not able to substantiate my response on March 5; therefore, I enclose the two letters herewith for the convenience of the Court.

If submission of the two letters is improper at this point in time, I hereby request the indulgence of the Court and further request that the letters be disregarded.

Yours very truly,

/s/

Alice Clissuras, Plaintiff-Appellant pro se
P. O. Box 1750
Brooklyn, NY 11201

Copies to: Office of the Clerk, for the files
Michael S. Adler, Office of Corporation Counsel
Robert Abrams, Attorney General
D. Nicholas Russo, Professional Staff Congress/CUNY
Bergadano, Zichello & Babchik

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1501
NEW YORK, NEW YORK 10007

August 2, 1985

Alice E. Clissuras
215 Adams Street
Brooklyn, NY 11201

Charge No.: 021-85-4337
Re.:New York City Teachers Retire

Dear Mr. Clissuras

We have received your complaint alleging unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended. Under Section 706(d) of Title VII, your complaint cannot be filed with this Commission until a state or local agency has had at least 60 days to resolve it; therefore, your complaint has been sent by us to the New York State Division of Human Rights.

The 60-day deferral period mentioned above has been waived by the New York State Division of Human Rights, and your charge is, therefore, now under our jurisdiction and pending investigation.

Please use the above charge number in any further inquiries or correspondence.

Sincerely,

Edward Mercado

Edward Mercado
District Director

U.S. Department of Justice

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

WBR:HAG:ljt

Washington, D.C. 20530

August 9, 1985

CERTIFIED MAIL

Ms. Alice E. Clissuras
215 Adams Street
Brooklyn, New York 11201

Re: EEOC Charges Against New York City Teachers' Retirement,
Professional Staff Congress and City University of New York
(New York City Technical College)
Nos. 021854337, 021854338 & 021854339

Dear Ms. Clissuras:

Because you filed the above charges with the Equal Employment Opportunity Commission, and the Commission has determined that it will not be able to investigate and conciliate those charges within 180 days of the date the Commission assumed jurisdiction over those charges, and this Department has determined that it will not file any lawsuit based thereon within that time, and because you have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondents.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice. If you are unable to retain an attorney, the Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs, or security. In order to apply for an appointed attorney, you should, well before the expiration of the above 90-day period, take this Notice, along with any correspondence you have received from the Justice Department or the Equal Employment Opportunity Commission, to the Clerk of the United States District Court in Brooklyn.

The investigative file pertaining to your case is located in the EEOC District Office, 90 Church Street, Room 1501, New York, New York 10007.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: [signature]
Herbert A. Goldsmith, Jr.
Attorney
Employment Litigation Section

cc: EEOC District Office
New York City Teachers' Retirement
Professional Staff Congress
City University of New York (New York City Technical College)

LETTER FROM CLERK OF COURT OF APPEALS
RE SUA SPONTE INQUIRY

State of New York
Court of Appeals

Donald M. Sheraw
Clerk of the Court

Clerk's Office
Albany 12207

July 27, 1987

Ms. Alice Clissuras
P.O. Box 021750
Brooklyn, New York 11202-0038

Re: Clissuras v. City of New York, et al.

Dear Ms. Clissuras:

The Court has received your 500.2 jurisdictional statement and may examine its subject matter jurisdiction sua sponte with respect to whether a substantial constitutional questions is directly involved to support an appeal as of right (CPLR 5601[b]).

This communication is without prejudice to any motion any party may wish to make. If you conclude that the order is not appealable as of right, please arrange for the execution of a stipulation consenting to a dismissal of the appeal and transmit that paper to my office. If a stipulation is to be forthcoming, please inform me immediately.

On the other hand, if you wish to persevere in the appeal, you are invited to present to the Court in writing within ten days of this letter's date your comments justifying the retention of subject matter jurisdiction. Your adversaries are likewise afforded this opportunity.

If this sua sponte inquiry is terminated by the Court, the Clerk will notify counsel in writing and set a new schedule for normal perfecting of the appeal.

Very truly yours,

Donald M. Sheraw

Donald M. Sheraw

JPA:pk
cc: Hon. Peter L. Zimroth
Hon. Robert Abrams
D. Nicholas Russo, Esq.
Bergadano, Zichello & Babchik, Esqs.

PLAINTIFF-APPELLANT'S LETTER TO COURT OF APPEALS
RE OBJECTIONS TO SUA SPONTE INQUIRY AND CONSTITUTIONAL
BASES FOR APPEAL (PP. 876-881)

August 11, 1987

The Court of Appeals of the State of New York
Court of Appeals Hall
Albany, NY 12207

TO THE COURT OF APPEALS OF THE STATE OF NEW YORK (WACHTLER, C.J.):

Re: Clissuras v. City of New York, et al. Index No. 20522/85

By this letter, plaintiff-appellant, Alice Clissuras, is responding to the July 27, 1987, letter of the Clerk of the Court which raised the matter of the Court's sua sponte examination of its subject-matter jurisdiction in the above-entitled action as to the involvement of substantial constitutional questions.

Plaintiff-appellant strongly objects to the raising of this question in view of the fact that she has been deprived of all of her constitutional rights regarding the matters in issue herein by the actions of all of the defendants, all of the governmental agencies, and all of the Courts. See Record on Appeal and Appellate Briefs which are enclosed. The deprivations of constitutional rights are clearly evident in said papers, which deprivations are completely documented therein by plaintiff-appellant, are totally uncontroverted by the defendants-respondents, and are not addressed or considered by the Courts.

Plaintiff-appellant has been discriminated against on the bases of her sex and religion by her employer (Board of Higher Education, City University, New York City Technical College) during the entire period of her employment of 34 years and the discrimination continues to date. In her 33-page complaint, the pivotal cause of action, among the many causes of action, is the employment discrimination (Rec. on Ap., pp. 69-101). Not one of the four orders of the Supreme Court, Kings County, and Appellate Division, Second Department, dismissing the complaint, even mentions employment discrimination (Rec. on Ap., pp. 9-12, 19-21, 29-30, and enclosed Decision & Order of App. Div., 2d Dept.).

In Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 768 (1983), the Court found that plaintiff-appellant's employer, Board of Higher Education, discriminated against females. This decision covered the entire period of plaintiff-appellant's employment and beyond (Rec. on Ap., pp. 201-204).

In the instant case, the Courts dismissed the complaint on the ground of a 4-month time limitation; this was done without any consideration of the claim of discrimination, without consideration of defendants-respondents' failure to respond to said claim, without consideration of the statutorily provided limitation period for discrimination, and without consideration of plaintiff-appellant's discovery of the fraud by which the discrimination had been concealed. Applying a 4-month limitation period to discrimination is unconstitutional and unlawful. In Melanie, since the discrimination was and is a continuing wrong, there was no time limitation. Plaintiff-appellant is a member of the Melanie class and subject to the discrimination of the Board of Higher Education, one of the defendants-respondents herein.

It is not clear to plaintiff-appellant whether the Appellate Division, Second Department, did, in fact, dismiss the employment discrimination claim, since the cause of action is not mentioned in the Order and the Order is unsigned.

Further, the Appellate Division, Second Department, in its Order affirming dismissal of the complaint, did not address and did not respond to the 20 questions presented for review in plaintiff-appellant's brief, pp. 3-4. Said 20 questions involve constitutional questions and deprivations to which the Supreme Court, Kings County, also did not give due consideration and did not respond in the three Orders by which Kings County dismissed the complaint as against all of the defendants-respondents.

By all of the actions of the defendants-respondents, the governmental agencies, and the Courts herein, plaintiff-appellant has been deprived of her constitutional rights, as follows:

1. Deprivation of Constitutional Right to Equal Protection and Application of the Laws

   Documentation of the discriminatory and fraudulent application of the New York State Pension Laws to plaintiff-appellant is found on pp. 344-349 and 608 of the Record on Appeal.

   Documentation of the discriminatory and fraudulent application of the New York State Retirement and Social Security Law to plaintiff-appellant's service is found on pp. 359-369 of the Record on Appeal.

   No defendant-respondent has responded to and no defendant-respondent has controverted said pension and service discriminatory and fraudulent acts. Not one piece of evidence

has been produced to disprove plaintiff-appellant's documented claims. The discriminatory and fraudulent pension and service have not even been mentioned and have not been counterargued.

2. Deprivation of Constitutional Right to Trial by Jury

No public agency and no court has held a hearing and there has been no trial to date of the issues of fact and of the claims of employment discrimination, fraud, conspiracy, breach of contract, breach of fiduciary duty, and deprivation of constitutional rights.

The defendants-respondents have not answered and have not in any way controverted the above claims. This should have resulted in a decision in favor of plaintiff-appellant on the ground that there is no triable issue when defendants have no response to the causes of action.

The Courts herein dismissed the many issues of facts and all of the above-mentioned claims which includes fraud, without a hearing and without a trial on the ground of a 4-month time limitation. There is no court decision that supports dismissal of discrimination, fraud, conspiracy, breach of contract, breach of fiduciary duty, and constitutional deprivations, on the ground of a 4-month time limitation; so to hold is unconstitutional and unlawful.

3. Deprivation of Constitutional Right to Due Process

There has been no hearing and investigation of the claim of discrimination which was effected fraudulently.

The Courts did not give any consideration to the claim of fraud and its effect on accrual of cause of action.

The Courts did not specifically state the accrual times and causes.

The Courts did not give any consideration to defendants-respondents' reliance on fraudulent papers and use of altered evidence.

The Court Orders are defective in that the nature of the action is not correctly stated, in that most of the causes of action are not mentioned, and in that no opinions and reasons for dismissal are set forth. This deprives plaintiff-appellant of her constitutional right to counterargue and to perfect her appeal.

Defendants-respondents have refused to provide a copy of plaintiff-appellant's records, in violation of law. This act is a continuance of the fraudulent concealment involved herein.

Only one record of Special Term is available; two Special Term proceedings were not on the record; and plaintiff cannot obtain any information as to the record for Appellate Division. The Courts of record herein deprive plaintiff of her constitutional rights and her right to perfect appeal.

4. Deprivation of Constitutional Right to Counsel

Plaintiff-appellant has been prevented from retaining legal counsel and gaining needed pension and legal information by a conspiracy of the defendants-respondents. The Courts have not addressed this deprivation and have not extended their protection to the forced pro se status of plaintiff-appellant.

The above claims and acts within each category are set forth as illustrations of the points being made and are not intended as a complete enumeration of the constitutional claims and wrongs herein.

In view of the countless constitutional deprivations of plaintiff's rights as set forth in the Jurisdictional Statement and more fully above, it is improper for the Clerk of this Court to raise a sua sponte inquiry in this action as to subject matter jurisdiction. It appears that such inquiry would constitute an additional constitutional deprivation should it continue.

It also appears that the proper questions which should have been raised at this point are: why has plaintiff been deprived of all of her constitutional rights and the equal application and protection of the laws; why is plaintiff being deprived of her inviolate constitutional right to trial of the many causes herein; why are documented claims of discrimination and fraud dismissed without an inquiry or investigation and without requiring the defendants to make any response to such claims; why are documented claims of discrimination and fraud, among the many claims, dismissed without even

being mentioned in Court Orders of dismissal; why do the Courts not consider the statutorily provided limitation periods for plaintiff-appellant's claims, not one of which is subject to a 4-month time limitation; why are plaintiff-appellant's discriminatory and fraudulent pension and service claims dismissed when no one has stated what the pension for plaintiff-appellant's years of service should be; why do the Courts dismiss a 33-page complaint without stating the causes of action, reasons for dismissal, and opinion; how valid is an unsigned Court Order; why is a complaint dismissed when the defendants-appellants do not address any of the claims and do not submit any documentation to support their motions for dismissal other than fraudulent documents and altered documents; why are the defendants-respondents not required to substantiate their motions for dismissal; why were the many issues of fact in the complaint dismissed without a trial; and why are tactics used to overcome a valid complaint after the plaintiff has been conspiratorily deprived of retaining counsel.

The claims are not addressed; the defendants-respondents do not respond to the claims; the Courts do not show evidence of due consideration of the claims; and the complaint is dismissed. Plaintiff-appellant has not been afforded even one constitutional and legal right. The Clerk's sua sponte inquiry in the face of all of this constitutes another constitutional deprivation and should be terminated. Plaintiff-appellant should be allowed to perfect appeal to the Court of Appeals.

The interests of the Constitution, justice, and law demand that plaintiff-appellant be allowed her day in court. The constitutional rights are inviolate and plaintiff-appellant is entitled to her constitutional and legal rights regardless of sex and religion. The many wrongs, injustices, and abuses, herein demand remedy according to the constitution and the laws.

Very truly yours,

/S/

Alice Clissuras, Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038

Enclosures:

Decision and Order (one paper) of the Appellate Division, Second Department

Plaintiff-Appellant's Brief

City University Defendants-Respondents' Brief

Brief for Defendant-Respondent Professional Staff Congress/CUNY

Brief for Defendant-Respondent Lewis Rosenberg

Plaintiff-Appellant's Reply Brief

Brief for Respondents City of New York, Teachers' Retirement Board, and Teachers' Retirement System

Plaintiff-Appellant's Reply Brief Responding to Brief for City Defendants-Respondents

Record on Appeal

ATTESTATION OF SERVICE

Alice Clissuras hereby attests that she mailed a copy of this letter to each of the opposing attorneys on August 11, 1987.

The enclosures were not included in the mailing to the attorneys since all of the papers included in the enclosures are in their possession. Should there be a need, copies will be mailed upon request.

/s/
Alice Clissuras

cc: Hon. Peter L. Zimroth
Hon. Robert Abrams
D. Nicholas Russo, Esq.
Bergadano, Zichello & Babchik, Esqs.

LETTER OF STATE DEFENDANTS-RESPONDENTS ARGUING NO BASIS FOR APPEAL (PP. 882-883)

STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, NY 10271
(212) 341-2641

ROBERT ABRAMS
Attorney General

August 18, 1987

Hon. Donald Sheraw
Clerk
Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: Clissuras v. City of New York, et al.

Dear Mr. Sheraw:

This letter is submitted on behalf of respondents Board of Higher Education, City University of New York, New York City Technical College and the Department of Insurance in response to the Court's letter of July 27, 1987. The Court asked for comment on whether a substantial constitutional question is involved in the above referenced case so as to support an appeal as of right.

The appellant commenced this pro se action challenging the amount of her pension benefits almost three years after her retirement from respondent Technical College. The complaint alleges, inter alia, employment discrimination, fraud, conspiracy, gross negligence and the deprivation of her constitutional rights of equal protection and due process. Appellant also filed an identical complaint in the United States District Court for the Eastern District of New York. Chief Judge Weinstein dismissed the complaint on the grounds that the claims were time-barred and that no constitutional violation existed. The Second Circuit Court of Appeals affirmed the decision and the Supreme Court denied appellant's petition for a writ of certiorari. Clissuras v. City of New York Teachers' Retirement Board, et al., 107 S. Ct. 405 (1986).

Although appellant raises constitutional questions, her claims are, in fact, frivolous. Indeed, it is clear from the face of the jurisdictional statement that appellant cannot take an appeal as of right. The Appellate Division unanimously

held that the complaint against the above-named respondents was time barred because it was not filed within the four month statute of limitations applicable to Article 78 proceedings. Such a decision provides no basis for an appeal as of right to this Court. See CPLR 5601.

Very truly yours,

ANNE EHRENKRANZ
Assistant Attorney General

AE:rf
cc: Alice Clissuras
P.O. Box 021750
Brooklyn, N.Y. 11202

Michael S. Adler, Esq.
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007

D. Nicholas Russo, Esq.
Professional Staff Congress/CUNY
25 West 43rd Street
New York, New York 10036

Ann Theresa McIntyre, Esq.
Bergadano, Zichello & Babchik
420 Lexington Avenue
New York, New York 10170

LETTER OF UNION ATTORNEY DEFENDANT ARGUING NO BASIS FOR APPEAL

BERGADANO, ZICHELLO & BABCHIK
ATTORNEYS AT LAW

THE GRAYBAR BUILDING
420 LEXINGTON AVENUE
NEW YORK, N Y 10170

TELEPHONE (212) 972-5560
TELECOPIER (212) 972-5569

August 20, 1987

Honorable Donald Sheraw
Clerk
Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: Clissuras v. City of New York, et al.

Dear Mr. Sheraw:

This letter is submitted on behalf of the respondent Louis Rosenberg in response to the court's letter of July 27, 1987, and the appellant's letter of August 11, 1987.

We are also in receipt of a letter dated August 18, 1987 from the State of New York, Department of Law on behalf of the respondents Board of Higher Education, City University of New York, New York City Technical College and the Department of Insurance. We are in agreement with the statements made in that letter on behalf of those respondents. It is clear that although the appellant may raise constitutional questions, her claims are frivolous. Appellant has no basis for an appeal as of right as the complaint was dismissed as time barred as is was not followed within the four month statute of limitations applicable to Article 78 proceedings, and appellant therefore has no basis for an appeal as of right to the Court of Appeals under CPLR 5601.

Very truly yours,

Ann Teresa McIntyre

ATM/H13;jd
cc: Alice Clissuras
Michael S. Adler, Esq.
D. Nicholas Russo, Esq.
Anne Ehrenkranz

LETTER FROM PLAINTIFF-APPELLANT REPLYING TO ARGUMENTS OF DEFENDANTS-RESPONDENTS RE CONSTITUTIONAL BASIS FOR APPEAL (PP. 885-887)

August 28, 1987

Hon. Donald Sheraw, Clerk
Court of Appeals of the State of New York
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

Dear Mr. Sheraw:

Re: Clissuras v. City of New York, et al. Index No. 20522/85

By this letter, plaintiff-appellant, Alice Clissuras, makes a brief reply to the August 18, 1987, letter of the Attorney General of the State of New York, by Anne Ehrenkranz, A.A.G., attorney for the City University defendants-respondents and the Department of Insurance defendant-respondent herein. In said letter of August 18, Attorney Ehrenkranz set forth comments on the plaintiff-appellant's right to appeal to this Court, which comments were supported by Attorney Ann Teresa McIntyre of Bergadano, Zichello & Babchik, attorneys for defendant-respondent Rosenberg, in the August 20, 1987, letter to this Court from Attorney McIntyre.

The letters of Attorneys Ehrenkranz and McIntyre are classic illustrations of the failure of all the parties herein and their attorneys to respond to any of the claims herein.

In order to determine which limitation prescribed by law applies to particular claims, each claim must be examined and identified as to the facts out of which the claim arises and the relief sought; thus, it can then be determined which statute of limitations governs each cause of action. This was patently not done for plaintiff-appellant's claims.

Attorney Ehrenkranz states in her letter, "The Appellate Division unanimously held that the complaint against the above-named respondents was time barred because it was not filed within the four month statute of limitations applicable to Article 78 proceedings." Attorney McIntyre echoed this statement. No one states the wrong from which the four months would begin to count.

Plaintiff-appellant's discriminatory and fraudulent pension was concealed from her by all of the defendants-appellants herein until July, 1985, when plaintiff-appellant received a communication from

City University which certified plaintiff-appellant's City service as a total of 29 years instead of the 34 years which she served. This was the first moment that plaintiff-appellant discovered that her pension had been discriminatorily and fraudulently calculated for 29 years. No one responds to this. Plaintiff-appellant documents this in the Record on Appeal, p. 482. This has not been controverted by any defendant.

At the point of retirement, the Retirement System gave plaintiff a discriminatory and fraudulent explanation of the pension (Rec. on Ap., p. 214). Not one defendant revealed the fraud therein. The Corporation Counsel, by Michael Adler, A.C.C., attorney for the City defendants-respondents, relied on the fraudulent letter on p. 214 in his brief and in his oral argument in Appellate Division. Plaintiff-appellant brought the fraud contained in said letter to the attention of the Court. In addition to the fraud, this letter shows that the plaintiff was not aware of the discriminatory and fraudulent amount of her pension at that point. The discovery came much later in July, 1985, and this action was commenced in August, 1985.

The application of a four-month limitation to the causes of action herein is unconstitutional. See Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981). Further, there is a total failure on the part of all concerned to consider documented fraud and its concealment and the effect of fraud and concealment on the limitations applicable to the concealed causes.

City University has discriminated against plaintiff for 34 years of employment and has not applied the laws equally to plaintiff as Constitutionally required. City University will not give plaintiff a copy of her employment record. City University, in addition to using fraudulent communications, used an altered letter as evidence in its Supreme Court papers (Rec. on Ap., pp. 509-510, 541-542 ¶f, and 554).

Attorney Ehrenkranz did not make any oral argument in Appellate Division. She did not respond to and she did not controvert plaintiff-appellant's documented City University fraud and alteration.

Attorney Ehrenkranz goes on to state in her letter, "Although appellant raises constitutional questions, her claims are, in fact, frivolous." Attorney McIntyre echoed this statement in her letter. It is a sad commentary to find that the only response the attorneys can make to a deprivation of constitutional rights is "frivolous." However, that does not respond to the deprivations. No where can a response be found.

The attorneys claim that Appellate Division held that the complaint was time barred on the basis of a four-month limitation. Plaintiff has not received an order that has been signed by the Appellate Division (Bracken, J.P., Lawrence, Kunzeman, and Spatt, JJ.). Plaintiff received an unsigned order from the Law Department of the City of New York and it appears that the order was prepared by that office. Plaintiff has not received a signed order from the Court, to date.

Plaintiff's action is replete with Constitutional deprivations, especially in due process rights. Plaintiff has been deprived of her civil rights and right of equal protection of the laws without a hearing. Plaintiff has been deprived of her constitutional right to a trial by jury. The many issues of fact herein were dismissed unconstitutionally without a trial.

After over 30 attempts, plaintiff could not retain counsel which is another constitutional deprivation. No one even mentions this. Moreover tactics are used by all to take advantage of plaintiff's limited legal background.

The letters of Attorneys Ehrenkranz and McIntyre simply refer to all of the claims of Constitutional deprivations as "frivolous." It appears that the function of "frivolous" is to be used when there is no response.

Constitutional rights are inviolate. Plaintiff has many constitutional bases for an appeal as of right to this Court. An examination of the Record and Briefs clearly shows this and clearly shows the failure on the part of all concerned to respond to the claims herein.

Very truly yours,

/s/

Alice Clissuras
Plaintiff-Appellant, pro se

P. O. Box 021750
Brooklyn, NY 11202-0038

cc: Hon. Peter L. Zimroth, Corporation Counsel (M. Adler, A.C.C.)
Hon. Robert Abrams, Attorney General (A. Ehrenkranz, A.A.G.)
D. Nicholas Russo, Esq., Professional Staff Congress/CUNY
Bergadano, Zichello & Babchik, Esqs. (A. McIntyre, Esq.)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

UNSIGNED DECISION DENYING TO PLAINTIFF DOCKET, ACCESS TO FILE, TRANSCRIPT AND SIGNED DECISION OF APP. DIV.

0867K
B/nl

Dated - Sept. 22, 1987

LAWRENCE J. BRACKEN, J.P.
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
ARTHUR D. SPATT, JJ.

Motion No. 5737

DECISION & ORDER ON MOTION

Alice Clissuras, appellant, v
City of New York, et al.,
respondents.

Motion by appellant for a direction that the following documents be furnished to the appellant (1) a copy of the decision and order of this court dated June 22, 1987, signed by the Justices who presided on the appeals from several orders and a judgment, (2) the file for this action on this case maintained by the Clerk of this court (3) the docket for this appeal and (4) the transcript of the proceedings had in this court on the hearing of the appeals on March 5, 1987.

Upon the papers filed in support of the motion and no papers having been filed in opposition thereto, it is

ORDERED that the motion is granted to the extent that the clerk of this court is directed to transmit a certified copy of the decision/order of this court dated June 22, 1987, by United States Regular Mail; and it is further,

ORDERED that the motion is denied in all other respects.

This court does not maintain the file upon the determination of an appeal. The file is returned to the court below as a part of the remittitur. This court does not require that a transcript be made of proceeding upon the oral argument of an appeal.

ENTER:

MARTIN H. BROWNSTEIN
Clerk

PLAINTIFF-APPELLANT'S MOTION FOR RECORDS AND AFFIDAVIT IN SUPPORT (PP. 889-893)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, :

Defendants-Respondents. :

- x

NOTICE OF MOTION FOR RECORDS AND DOCUMENTS OF ENTITLEMENT

RECEIVED
JUL 14 4 05 PM '87
APPELLATE DIVISION
SECOND DEPARTMENT

S I R S:

PLEASE TAKE NOTICE that, upon the affidavit in support attached hereto, plaintiff-appellant, Alice Clissuras, will move this Court at a Special Term of the Appellate Division, Second Department, of the Supreme Court of the State of New York, at 9:30 a.m., on the 31st day of July, 1987, or on the earliest available date fixed by the Clerk of the Court, for an order directing that the following records and documents of entitlement be provided and made available to plaintiff-appellant:

1. A copy of the Decision and Order (one paper), dated June 22, 1987, signed by Justices Bracken,

Lawrence, Kunzeman, and Spatt. A signed Decision and Order of this Court has not been received by plaintiff-appellant to date. An unsigned Decision and Order was mailed to plaintiff-appellant in an envelope which bore the return address of the Law Department of the City of New York, which unsigned Decision and Order affirmed the three orders of the Supreme Court, Kings County (Shaw, Bernstein, and Hurowitz, JJ.).

2. The file for this action, Clissuras v. City of New York, et al., maintained by the Clerk of Appellate Division, Second Department. To date, plaintiff-appellant has not been allowed access to the file. Further, plaintiff-appellant has not been informed of the file number for this action;

3. The docket for this action, maintained by the Clerk of Appellate Division, Second Department; and

4. The transcript of the March 5, 1987, proceedings at which the causes of this action were argued on appeal;

And for such other and further relief as to the Court may seem just and proper.

Dated: July 14, 1987.

Yours, etc.,

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

TO:

Attorneys for Defendants-Respondents
(Names, addresses and telephone
numbers appear on the next page
following this page.)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- :

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG, : AFFIDAVIT IN SUPPORT OF MOTION FOR RECORDS AND DOCUMENTS OF ENTITLEMENT

Defendants-Respondents.:

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

ALICE CLISSURAS attests and says:

1. That she is the plaintiff-appellant in the above-entitled action.

2. That three orders were entered in the office of the Clerk of the Supreme Court, County of Kings, Index No. 20522/85, dismissing the complaint as against all of the defendants herein.

3. That plaintiff-appellant appealed to this Court on full record and the argument of the causes herein was heard on

March 5, 1987, before Presiding Justice Bracken, Justices Lawrence, Kunzeman, and Spatt.

4. An unsigned Decision and Order (one paper), dated June 22, 1987, was mailed to plaintiff-appellant by the Law Department of the City of New York. Plaintiff-appellant has not received a signed Decision and Order to date. The fee for this was paid by plaintiff-appellant in advance to the Clerk of this Court.

5. Plaintiff-appellant has not been informed to date of any settlement proceedings as to said Decision and Order.

6. A file number has not been assigned to this action and plaintiff-appellant has not been allowed to view the file to date.

7. Plaintiff-appellant has not been able to obtain a copy of the docket for this action.

8. Plaintiff-appellant has not been able to obtain information as to the transcript of the March 5, 1987, proceedings at which the causes herein were argued on appeal.

WHEREFORE, plaintiff-appellant respectfully requests that this Court order and direct:

a. That plaintiff-appellant be informed of the settlement proceedings in the event that the unsigned paper prepared by the Law Department is a proposed Decision and Order; a copy of the unsigned paper is attached at the end hereof;

b. That a signed Decision and Order be provided to plaintiff-appellant in this action;

c. That plaintiff-appellant be apprised of the file number and be allowed to view the file in this action;

d. That a copy of the complete docket be supplied to plaintiff-appellant; and

e. That plaintiff-appellant be informed as to how to obtain a copy of the transcript of the March 5, 1987, proceedings.

Plaintiff-appellant is entitled to each of the items in a - e above by right and by law. Deprivation of the items deprives plaintiff-appellant of her Constitutional due process rights and specifically of her right to perfect an appeal.

/s/

ALICE CLISSURAS

Attested to before me this
14th day of July, 1987

/s/ Robert Falk No. 31-1155135

Mo. No. 1166 SSD 74

Alice Clissuras,
Appellant,

vs.

City of New York, et al.,
Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

DECISION COURT OF APPEALS OCT 13 1977

ABOVE PIECE OF PAPER IS COPY OF COURT OF APPEALS DISMISSAL OF PLAINTIFF-APPELLANT'S APPEAL

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ~~thirteenth~~ *day of* October *A. D. 19*87

Present, HON. SOL WACHTLER, *Chief Judge, presiding.*

Mo. No. 1166 SSD 74

Alice Clissuras,
Appellant,

vs.

City of New York, et al.,
Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

Donald M. Sheraw

Donald M. Sheraw
Clerk of the Court

PLAINTIFF-APPELLANT'S NOTICE OF APPEAL TO SUPREME COURT OF THE UNITED STATES (PP. 896-900)

STATE OF NEW YORK
COURT OF APPEALS

- -x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

Ct. of Ap. Mo.No.1166SSD74

App.Div.2d Nos.3774E-3776E

Kings County Clerk's Index No.20522/85

- -x

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Alice Clissuras, the plaintiff-appellant above named, hereby appeals to the Supreme Court of the United States, from an order of the Court of Appeals of the State of New York, dismissing appeal, entered October 13, 1987, and from all orders of the Courts below relevant thereto.

This appeal is taken pursuant to U. S. Const., Amend. I, Amend. IV, Amend. V, and Amend. VII; N.Y.S. Const., Art. I, §2,

§8, and §11; Deprivation of Constitutional Rights of Due Process, Trial, Counsel, Speech, and Equal Protection of Laws.

DATED: November 2, 1987.

ALICE CLISSURAS
Plaintiff-Appellant, pro se
P. O. Box 021750
Brooklyn, NY 11202
(718) 875-6171

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

I, ALICE CLISSURAS, attest and say that I am the appellant, pro se herein, and that on November 2, 1987, pursuant to Rule 28 of the Rules of the Supreme Court, I served a copy of the foregoing Notice of Appeal on each of the parties required to be served herein, as follows:

On the City of New York, Teachers' Retirement System of the City of New York, and Teachers' Retirement Board of the City of New York, the City Defendants-Respondents herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Michael Adler, Esq., Assistant Corporation Counsel, of record for said City Defendants-Respondents, at the office of Peter L. Zimroth, Esq., Corporation Counsel of the City of New York, 100 Church Street, New York, NY 10007.

On the Board of Higher Education of the City of New York, City University of New York, and New York City Technical College, the City University Defendants-Respondents herein, and on the Department of Insurance of the State of New York, defendant-respondent herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Anne Ehrenkranz, Esq., Assistant Attorney General, of record for said City University Defendants-Respondents and the Department of

Insurance Defendant-Respondent, at the office of Robert Abrams, Esq., Attorney General of the State of New York, Two World Trade Center, New York, NY 10047.

On the Professional Staff Congress/CUNY, the Union Defendant-Respondent herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to D. Nicholas Russo, Esq., attorney for said Union Defendant-Respondent, at the Union's office at 25 West 43d Street, New York, NY 10036.

On Lewis Rosenberg, the Union Attorney Defendant-Respondent herein, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Ann McIntyre, Esq., counsel of record for said Union Attorney Defendant-Respondent, at the office of Bergadano, Zichello, & Babchik, Esqs., 420 Lexington Avenue, New York, NY 10170.

All parties required to be served have been served.

I further attest and say that on November 2, 1987, the Notice of Appeal was mailed, by registered mail, to the Court of Appeals of the State of New York, Albany, NY 12207; a duplicate original was mailed to the Supreme Court of the United States, by registered mail, Washington, D.C. 20543; and a duplicate original was hand delivered to the Supreme Court of the State of New York, County of Kings, Brooklyn, NY 10201.

/S/

ALICE CLISSURAS

Subscribed and attested to
before me this 2d day of
November, 1987.

/S/

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

Index No. 20522/85 Year 19

STATE OF NEW YORK
COURT OF APPEALS

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, et al.,

Defendants-Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

ALICE CLISSURAS
Plaintiff-Appellant, pro se
~~XXXXXXXXX~~

Office and Post Office Address, Telephone

P. O. Box 021750
Brooklyn, NY 11202
(718) 875-6171

To

Attorney(s) for Defendants-Respondents

Service of a copy of the within

is hereby admitted

Dated,

FILED
1981 NOV -2 PM 2:17
KINGS COUNTY CLERK

REC. ON AP., P. 900

COURT OF APPEALS
STATE OF NEW YORK

- x

ALICE CLISSURAS, :

Plaintiff-Appellant, :

-against- : CERTIFICATION OF RECORD

CITY OF NEW YORK, et al., :

Defendants-Appellees. :

- x

ALICE CLISSURAS, plaintiff-appellant, pro se, does hereby certify pursuant to §2105 of the Civil Practice Law and Rules to the correction of all the papers constituting the Record on Appeal.

/S/

ALICE CLISSURAS
Plaintiff-Appellant, pro se